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94th Congress }
2d Session }

COMMITTEE PRINT

THE NATIONAL EMERGENCIES ACT (PUBLIC LAW 94-412)

Source Book: Legislative History, Texts, and Other Documents

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COMMITTEE ON GOVERNMENT OPERATIONS
AND THE
SPECIAL COMMITTEE ON NATIONAL
EMERGENCIES AND DELEGATED
EMERGENCY POWERS
UNITED STATES SENATE

NOVEMBER 1976

94TH CONGRESS
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LETTER OF TRANSMITTAL

U.S. Senate,
Committee on Government Operations,
Washington, D.C., October 20, 1976.

Hon. Nelson A. Rockefeller,
President of the Senate,
The Capitol, Washington, D.C.

Dear Mr. Vice President: The Committee on Government Operations transmits herewith for publication as a committee print a compilation of materials relative to the legislative history of the National Emergencies Act which was signed by the President on September 14, 1976 (Public Law 94-412).

This material, referred to as a Source Book, summarizes the activities of the Special Committee on National Emergencies and Delegated Emergency Powers, and the work of the Senate and the House of Representatives and the Senate Committee on Government Operations and the House Committee on the Judiciary, which processed the legislation in their respective Houses.

The Special Committee terminated its existence on April 30, 1976, and its co-chairmen requested the Committee on Government Operations to assume responsibility for the completion of the Source Book.

It is believed that this compilation will prove valuable and useful to scholars and other interested and affected persons.

Abe Ribicoff, *Chairman.*

PREFACE

This compilation of materials relating to the legislative history of Public Law 94-412, the National Emergencies Act, summarizes the three-year investigative and legislative activity culminating in this statute designed to guide the exercise of national emergency powers.

These efforts were undertaken by a special Senate study committee—The Special Committee on the Termination of the National Emergency which was later renamed The Special Committee on National Emergencies and Delegated Emergency Powers—and two legislative committees, the House Committee on the Judiciary and the Senate Committee on Government Operations.

This sourcebook was prepared by Dr. Harold C. Relyea, Congressional Research Service, Library of Congress, and William K. Sawyer and Gayle D. Fitzpatrick of the Special Committee.

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INTRODUCTION

Passage of the National Emergencies Act culminates three years of work by the Special Committee on National Emergencies and Delegated Emergency Powers. The legislation terminates powers and authorities possessed by the President as a result of existing states of national emergency and establishes procedural guidelines for the handling of future emergencies with provision for regular Congressional review. The bill should end the disarray that has characterized emergency laws and procedures in the United States.

To understand the full significance of the National Emergencies Act, one must place it within the context of Congressional efforts to reclaim prerogatives abandoned to the Executive. The Vietnam War and the abuses known collectively as "Watergate" have led Congress to assume a more prominent role, most notably in foreign policy and the budgetary process. It has enacted a War Powers Act, defeated major weapons proposals, investigated the intelligence community, and moved to impeach a President. Congress has insisted upon increased Executive accountability and greater freedom of information. The National Emergencies Act is consistent with these efforts to make the Executive accountable for his actions and to restore Congress as an equal partner in the government.

This sourcebook is a chronicle of the efforts behind this one Act. We trust that scholars will find this document helpful and hope that the nation enjoys such domestic tranquility that its authorities are never invoked.

Frank Church,
Charles McC. Mathias, Jr.,
Cochairmen.

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I

THE EVOLUTION OF THE NATIONAL EMERGENCIES ACT (PUBLIC LAW 94-412)*

Momentary exigencies in the life of a democracy may require the temporary exercise of extraordinary power to ensure the continued existence of that state and the preservation of the freedoms and rights guaranteed to its citizens during normal times. The aim of the National Emergencies Act is to insure that the exercise of national emergency authority is responsible, appropriate, and timely.

The origins of national emergency power in the evolution of America's national government can be traced to legislation enacted in 1775 by the Continental Congress.[1] Shay's Rebellion was probably the first emergency test for the new Federal administration. Until the crisis of World War I, Presidents utilized emergency authority, whether specified in the statutes or implied by the Constitution, at their own discretion. Special Presidential proclamations often announced the exercise of this exigency authority. Since the period of the First World War, the Chief Executive has, by means of a proclamation, declared a condition of national emergency, sometimes confining the matter of crisis to a specific policy sphere and sometimes placing no limitation on the pronouncement whatsoever.

National emergency proclamations

The first national emergency proclamation, explicitly issued as such, was made (39 Stat. 1814) by President Woodrow Wilson on February 5, 1917. Issued by virtue of the authority conferred upon the President by legislation establishing the United States Shipping Board (39 Stat. 728), the proclamation was concerned with matters of water transportation policy. It was terminated, along with a variety of other wartime measures, by statute (41 Stat. 1359) on March 3, 1921.

The next national emergency proclamation was issued (48 Stat. 1689) by President Franklin D. Roosevelt on March 6, 1933, some 48 hours after assuming office. Issued upon the somewhat questionable authority of the Trading With the Enemy Act of 1917 (40 Stat. 411), the proclamation declared a "bank holiday" and halted all financial transactions by closing the banks. The Chief Executive's action and proclamation were sanctioned by Congress with the passage of the Emergency Banking Act (48 Stat. 1) on March 9. The day this legislation was signed into law the President issued a second banking proclamation (48 Stat. 1691), based upon the authority of the new law, continuing the bank holiday until the various banking institutions established that they were capable of conducting business in accordance with new banking policy.

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*Prepared for the Special Committee by Harold C. Relyea, Analyst in American National Government, Government Division, Congressional Research Service, Library of Congress, under the direction of the staff of the Special Committee.

[1] For a concise history of the evolution and exercise of emergency powers in the United States see U.S. Congress. Senate. Special Committee on National Emergencies and Delegated Emergency Powers. A Brief History of Emergency Powers in the United States by Harold C. Relyea. Committee print 93rd Congress, 2d session. Washington, U.S. Govt. Print. Off., 1974.

Actually, the powers possessed by the President as a result of this emergency proclamation continued in force until their termination was provided for in the National Emergencies Act, some four decades later.

On February 28, 1935, President Roosevelt promulgated a proclamation (49 Stat. 3438) which, while it did not directly announce a condition of national emergency, recognized the continuation of an existing national emergency in the agricultural industry. Accordingly, the proclamation established the effective dates of the Cotton Control Act (48 Stat. 598) approved April 21, 1934. It was repealed on February 10, 1936 (49 Stat. 1106).

On September 8, 1939, President Roosevelt issued a proclamation (54 Stat. 2643) of "limited" national emergency, though the law gave no recognition to the qualifying term. Two years later, on May 27, 1941, the President issued a proclamation (55 Stat. 1647) of "unlimited" national emergency. This action did not add any new powers to the list of emergency authorities made available to the Chief Executive by the 1939 proclamation. Instead, the action was a political gesture prompted by the conflict in Europe and growing tensions in Asia.

These two war-related proclamations of a general condition of national emergency remained in effect until 1947 when certain specific emergency and war statute provisions were terminated by a law (61 Stat. 449) approved on July 25 that year. Earlier, on September 29, 1945, President Truman had, by proclamation (59 Stat. 886), withdrawn certain emergency provisions of the Internal Revenue Code as the end of hostilities in both theaters of war made their use no longer warranted.

On October 19, 1951, Congress terminated (65 Stat. 451) the declaration of war against Germany. On March 20, 1952, the Senate ratified the treaty of peace with Japan. Because these actions legally established the end of World War II, congressional action was required to continue certain emergency provisions. By joint resolution, Congress enacted the Emergency Powers Interim Continuation Act (66 Stat. 54) to maintain such emergency authority and continued to extend the life of the measure (66 Stat. 96; 66 Stat. 137; 66 Stat. 296) until the Emergency Powers Continuation Act was prepared and ratified (66 Stat. 330). This latter statute was continued (67 Stat. 18; 67 Stat. 131) until August, 1953, when its emergency authorities were finally allowed to elapse. On April 28, 1952, President Truman terminated by proclamation (66 Stat. c31) the 1939 and 1941 declared emergency conditions, leaving operative only those statutorily continued by the above noted laws.

Truman's 1952 termination announcement specifically exempted a proclamation of national emergency (64 Stat. A454) issued by Truman on December 16, 1950. The 1950 national emergency, proclaimed to provide the Chief Executive with additional powers to respond to hostilities in Korea, remained operative until 2 years after the enactment of the National Emergencies Act.

That legislation also provided for the effective termination of two emergency proclamations issued by President Richard M. Nixon. One proclamation was issued on March 23, 1970, in response to a postal strike. A second proclamation, issued on August 23, 1971, announced a national emergency with regard to balance of payments in overseas trade.

Congressional concerns

As the years passed, concern was expressed in Congress over the fact that President Truman's 1950 proclamation of national emergency continued to exist long after the conditions prompting its issuance had disappeared. (Other proclamations of emergency were not apparent until studies disclosed their existence in 1973.) Senator Charles McC. Mathias (R-Md.), in particular, was concerned that the President was retaining extraordinary powers intended only for time of genuine emergency and that the Chief Executive was thwarting the legislative intent of the Congress by his failure to terminate the declared national emergency. At the same time, concern over the President's exercise of war powers was growing as the United States became deeply embroiled in hostilities in Vietnam. In the course of examining American commitments in Southeast Asia, efforts were initiated to bring a special focus to bear on the exercise of national emergency powers. As Senator Mathias, a leader in this policy area, later testified:

> My own interest in the question of emergency powers developed out of our experience in the Vietnam War and the incursion into Cambodia. It became clear that the President had powers to commit us to warfare without adequate respect for the constitutional requirement that Congress alone can declare a state of war. During the years 1969–1972, particularly, I introduced or cosponsored numerous bills to repeal Congressional resolutions in support of the President's actions, for example, in Formosa and the Gulf of Tonkin. In 1971, I submitted Senate Concurrent Resolution 27 to establish a special joint committee to study the effect of terminating the first state of emergency we found in existence, that declared by President Truman in 1950 during the Korean War. Then on May 23, 1972, I introduced, with Senator [Frank] Church's co-sponsorship, Senate Resolution 304, which called for the creation of the Senate Special Committee on the Termination of the National Emergency. The committee was to be empowered "to conduct a study and investigation with respect to the termination of the 1950 emergency," to consider problems which might arise as the result of the termination and to consider what administrative or legislative actions might be necessary.[2]

The Special Committee was initially established after S. Res. 304 was considered and reported by the Foreign Relations Committee (S. Rept. 92–858, June 2, 1972) and the Senate Rules and Administration Committee (S. Rept. 92–914, June 21, 1972). Reported from the latter panel with technical amendments, the resolution was adopted by the Senate on June 23.

With the convening of the 93rd Congress, the Special Committee on the Termination of the National Emergency was again approved on January 6, 1973, through S. Res. 9 after the Foreign Relations Committee was discharged from any further consideration of the instrument. The Special Committee was subsequently continued by S. Res. 242, reported (S. Rept. 93–715) from the Committee on Rules and Administration on February 28, 1974, and voted by the chamber on March 1. With this measure the name of the panel was changed to the Special Committee on National Emergencies and Delegated Emergency Powers to reflect its focus upon matters apart from the 1950 emergency proclamation.

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[2] U.S. Congress. House. Committee on the Judiciary. Subcommittee on Administrative Law and Governmental Relations. *National Emergencies Act.* Hearings, 94th Congress, 1st session. March 6, 13, 19, and April 9, 1975. Washington, U.S. Govt. Print. Off., 1975, p. 20.

At the opening of the 94th Congress, the Special Committee's mandate was again extended with S. Res. 10 which was discharged from the Foreign Relations Committee on February 5 and referred to the Rules and Administration Committee where it was reported (S. Rept. 94–323) on July 23 and adopted three days later on July 26, 1975.

Unexpected legislative delay necessitated extension of the Special Committee's life for an additional two months in 1976. S. Res. 370, which authorized the extension, was introduced in the Senate on January 30, reported by the Rules and Administration Committee (S. Rept. 94–672) on February 26, and passed by the Senate on March 1, 1976.

Committee operations

The Special Committee was organized and prepared to begin its studies of emergency powers matters by the first week of January, 1973.[3] During its entire life, the panel was co-chaired by Senator Frank Church (D.-Idaho) and Senator Charles McC. Mathias, Jr. (R.-Md.). Other members of the unit during its existence were Senators Philip A. Hart (D.-Mich.), Clifford P. Case (R.-N.J.), Claiborne Pell (D.-R.I.), James B. Pearson (R.-Kan.), Adlai E. Stevenson III (D.-Ill.), and Clifford P. Hansen (R.-Wyo.). Generally, during the 93rd Congress, the principal research and investigative staff members of the Special Committee were William G. Miller, Staff Director, and Thomas A. Dine. For the 94th Congress, the panel was assisted by Jerry M. Brady, Staff Director, and William K. Sawyer.

An expression of the spirit and manner of procedure followed by the Special Committee may be found in the following (April 11, 1973) statement by Co-chairman Mathias:

> The committee's bipartisan nature reflects the intention of the Senate to examine emergency powers legislation solely from a constitutional perspective. We want to determine how these powers affect the proper relationship between the Executive and Legislative branches. For this reason, as specified by the authorizing resolution, the Special Committee is working closely with the Administration. Attorney General [Richard] Kleindienst, in response to a specific request of the Special Committee, has assigned members of the Justice Department to work with the staff of the Special Committee, and, we are happy to report that cooperation from the Justice Department has been full and thorough. It is expected that other departments and agencies will provide similar assistance.
>
> The first and most difficult task of the Special Committee is to be certain that all of the statutes and relevant Executive Orders have been collected for study and deliberation. At the present time, nowhere in the government—either in Congress or in the Executive Branch—is there a complete catalogue of statutes and Executive Orders pertaining to emergency powers. The staff of the Committee has undertaken—in cooperation with the Library of Congress, the General Accounting Office, and the Justice Department—a computer search of all relevant statutes in the U.S. Code. These findings are now being checked by the staff and we expect that a reasonably complete catalogue of all emergency power statutes will be issued as a committee print.
>
> When the statutes and Executive Orders are assembled, the Special Committee intends to work with the appropriate Executive departments and agencies to review every statute to determine which statutes would be required in the event of a future emergency. This process, in essence, would be an evaluation of their

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[3] U.S. Congress. Senate. Special Committee on the Termination of the National Emergency. Review and Manner of Investigating Mandate Pursuant to S. Res. 9, 93d Congress: A Working Paper. Committee print. 93d Congress, 1st session. Washington, U.S. Govt. Print. Off., 1973, p. 17.

present and future utility. Concurrently, the Special Committee intends to consult with each standing committee of the Senate with regard to the particular emergency powers that apply to its separate area of responsibility, and, to ask for its judgment on which should be amended.[4]

Early in its work, the panel became aware of the existence of proclamations of national emergency other than the 1950 declaration and began grappling with a growing canon of emergency law revealed through diligent research.[5] Ultimately, three compilations were produced by the unit. The first of these, released in the autumn of 1973, identified 470 provisions of Federal law delegating extraordinary authority to the Executive in time of national emergency.[6] The second study, appearing in the spring of 1974, identified a panoply of Executive Orders and Presidential proclamations implementing or otherwise bearing upon the exercise of emergency power by the Executive.[7] And the final research product, offered during the summer of 1974, briefly surveyed the history of the utilization and evolution of Federal emergency power from the earliest days of the Republic to the closing months of 1974.[8]

On April 11, 1973, the Special Committee began public hearings on the matter of national emergencies and the status of emergency powers, the first such deliberations by a congressional panel since 1952.[9] The proceedings of April 11 and 12 and November 28 were devoted to constitutional questions concerning emergency powers with some of the leading constitutional scholars of the country offering their views to the panel. Professor Robert S. Rankin of Duke University (Emeritus), Professor Cornelius P. Cotter of the University of Wisconsin, and Professor J. Malcom Smith of the California State University testified before the Special Committee on general historical and legal matters pertaining to emergency powers. Dean Adrian S. Fisher of the Georgetown University Law School addressed the circumstances surrounding the declaration of the 1950 national emergency, citing his experience as an advisor to President Truman at the time that declaration was made. Dr. Gerhard Casper, Professor of Law and Political Science at the University of Chicago, spoke before the panel regarding constitutional matters surrounding Executive use of emergency powers and comparing the experiences of other democratic states, particularly those of the German Weimar Republic. On July 24, former Attorneys General Tom C. Clark (1945–1949), Nicholas deB. Katzenbach (1965–1967), and Ramsey Clark (1967–1969) offered their historical and professional views on the emergency powers situation. After his resignation as head of the Justice Department, Elliot Richardson presented his views to the Special Committee as did former Solicitor General Erwin N. Griswold (1967–1972).[10] After these hearings were concluded, the Special Committee, on August 22, 1974, issued an interim report (S. 93–1170) of findings and recommendation, saying, in part:

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[4] U.S. Congress. Senate. Special Committee on the Termination of the National Emergency. National Emergency. Hearings, 93d Congress, 1st session. April 11, 1973. Washington, U.S. Govt. Print. Off., 1973, pp. 4–5.

[5] See U.S. Congress. Senate. Special Committee on the Termination of the National Emergency. Review and Manner of Investigating Mandate Pursuant to S. Res. 9, 93d Congress: A Working Paper. Committee print, 93d Congress, 1st session. Washington, U.S. Govt. Print. Off., 1973, pp. 2–6.

[6] See U.S. Congress. Senate. Special Committee on the Termination of the National Emergency. Emergency Powers Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency. Committee print, 93d Congress, 1st session. Washington, U.S. Govt. Print. Off., 1973. [Also issued as S. Rept. 93–549 and in an abridged form.]

[7] See U.S. Congress. Senate. Special Committee on National Emergencies and Delegated Emergency Powers. Executive Orders in Times of War and National Emergency. Committee Print, 93d Congress, 2d session. Washington, U.S. Govt. Print. Off., p. 1974.

[8] See Note 1.

[9] See U.S. Congress. House. Committee on the Judiciary. Subcommittee No. 4. Emergency Powers Continuation Act. Hearings, 82d Congress, 2d session. February 27, 28, 29, March 6, 7, 12, 13, 21, 24, 26, 28, April 2, 7, 25, 28, 1952. Washington, U.S. Govt. Print. Off., 1952.

> In our view, Congress should provide statutory guidelines to assure the full operation of constitutional processes in time of war or emergency. This is the best prescription to avoid any future exercise of arbitrary authoritarian power. For as the Youngstown Case [*Youngstown Sheet & Tube Company* v. *Sawyer*, 343 U.S. 579 (1952)] decided where there is a statute, the Executive is obliged to use the statutory remedy; where there are no lawful statutory guidelines is to invite so-called inherent powers to come into play. There is without question a need, in the view of the Special Committee, to provide the Executive branch with an effective, workable method for dealing with future emergencies in accord with constitutional processes. The Special Committee has sought to do this in fulfillment of its mandate.

By unanimous approval of its membership on July 11, the Special Committee recommended legislation "[t]o terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies." As proposed, the measure (1) would terminate, after 271 days from the date of enactment, all powers and authorities conferred by law upon the President or his Executive branch subordinates and all powers and authorities conferred by any Executive Order pursuant to law as a result of the existence of any national emergency currently in effect, (2) established a procedure whereby future proclamations of a national emergency by the Chief Executive would have to be published in the *Federal Register* and in accordance with the requirements of the act, (3) required that the President indicate what provisions of emergency law he sought to have come into effect upon proclaiming a national emergency with notice of same being made both to Congress and in the *Federal Register*, (4) provided that a proclamation of national emergency would terminate after 180 days from date of declaration unless terminated earlier or extended by an act of Congress, (5) required that pertinent executive branch orders, rules, and regulations having a bearing upon the exercise of national emergency authority be maintained in a file, indexed, and otherwise made known to Congress, and (6) repealed certain provisions of emergency law deemed no longer worthy of continuation. In arriving at this recommended legislation, the Special Committee had consulted the Executive regarding the utility of existing emergency statutes, recommendations for legislative action, and views as to the repeal of certain provisions of emergency law.[11]

National Emergencies Act

The Special Committee's recommended legislation (S. 3957) was introduced in the Senate on August 22, 1974, by Senator Church for himself and seven other members of the panel (Senators Mathias, Case, Hansen, Hart, Pearson, Pell and Stevenson) as well as Senators Lawton Chiles (D.–Fla.) and Sam Erwin (D.–N.C.).[12] Other subsequent co-sponsors included Senators Harrison Williams (D.–N.J.), Edmund Muskie (D.–Maine), Jacob Javits (R.–N.Y.), Abraham Ribicoff (D.–Conn.) and William Roth (R.–Del.). Referred to the Committee on Government Operations, the measure was reported (S. Rept 93–1193) on September 30 without public hearings or amendment. The bill was debated on October 7, at which time Senator Mathias offered certain amendments suggested in behalf of the President by the Office of Management and Budget which were accepted, and adopted.[13] Summarizing the proposed amendments, Senator Mathias said:

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[10] See U.S. Congress. Senate. Special Committee on the Termination of the National Emergency. National Emergency. Hearings, 93d Congress, 1st session. April 11, 12; July 24; [and] November 28, 1973. Washington, U.S. Govt. Print. Off., 1973.

[11] These views have been collected and published in U.S. Congress. Senate Special Committee on National Emergencies and Delegated Emergency Powers. Executive Replies: Evaluation of Emergency Powers Statutes. Committee print, 93d Congress, 2d session. Washington, U.S. Govt. Print. Off., 1974; ———. ———. ———. Executive Replies: Summaries of the Executive Branch and Committee Recommendations. Committee print, 93d Congress, 2d session. Washington, U.S. Govt. Print. Off., 1974; ———. ———. ———. Executive Replies: Statutes at Large. Committee print, 93d Congress, 2d session, Washington, U.S. Govt. Print. Off., 1974.

> What they do is very simple. They extend the grace period [regarding the repeal of certain emergency power provisions of the U.S. Code] provided in the bill from nine months to a year.
>
> They provide that while Congress can terminate a national emergency at any time by a concurrent resolution, there will be no automatic termination after six months if there is no affirmative action. This has been replaced by a requirement for the Congress to meet every six months to consider whether to terminate an emergency. An expedited privileged procedure would assure consideration and a vote should the Congress so decide.
>
> We have reduced the list of statutes to be repealed. In working with the other body, partially as a result of special committee studies, most of the provisions that have been deleted from our original list are to be taken care of in various deadwood projects by the Codification Committee of the House of Representatives.
>
> There are six statutes which are to be exempted from the provisions of this act. These statutes include Trading With the Enemy Act, a Ready Reserve provision, purchasing contract lease and claims authorities believed by the Executive branch to be absolutely essential for the operation of government. There is a requirement that the committees with jurisdiction over these provisions must make a study and report recommendations within nine months about modifications or any other changes to be made.
>
> Finally, the requirement for accounting of expenditures incurred under the authority of emergency powers statutes . . . has been included.[14]

Although a version of the Special Committee's recommended legislation was introduced in the House (H.R. 16668) by Representative Peter Rodino, Jr. (D.–N.J.) on September 16, the Committee on the Judiciary, to which the measure was referred, did not have an opportunity to consider either that bill or the Senate adopted proposal due to the press of other business, chiefly the impeachment of President Richard M. Nixon and the nomination of Nelson A. Rockefeller to be Vice President of the United States.[15] The National Emergencies Act thus failed to obtain passage in both Houses of Congress before the expiration of the 93rd Congress.

With the convening of the next Congress, the proposal was again introduced in both chambers. In the House, Representative Rodino offered the bill (H.R. 3884) for himself, Representatives Walter Flowers (D.–Ala.), George Danielson (D.–Calif.), Barbara Jordan (D.–Tex.), Romano Mazzoli (D.–Ky.), Edward Pattison (D.–N.Y.), and Hamilton Fish, Jr. (R.–N.Y.) on February 27, 1975.[16] Special

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[12] Congressional Record, v. 120, August 22, 1974 [Daily edition], S15784–15794.
[13] *Ibid.*, October 7, 1974 [Daily edition], pp. S18356–S18367.
[14] *Ibid.*, p. 18357.
[15] See *Ibid.*, September 16, 1974 [Daily edition], p. H9266.
[16] See *Ibid.*, v. 121, February 27, 1975 [Daily edition], p. H1260.

Committee Co-chairmen Church and Mathias introduced an identical measure (S. 977) in the Senate on March 6.[17]

Hearings were held in the House before the Subcommittee on Administrative Law and Government Relations, under the chairmanship of Representative Flowers, on March 6, 13, 19 and April 9.[18] Testimony was taken from a number of government witnesses; the bill was subsequently marked up and, on April 15, the Subcommittee reported, by a 4–0 vote, an amended version of the measure to the full Committee on the Judiciary. Major changes in the proposal included the addition of further emergency power provisions of the U.S. Code to the exemption from termination section of the legislation and an extension of the one year grace period on terminated provisions to two years. On May 21, the full Committee, by voice vote, reported (H.Rept. 94–238) the bill with technical amendments.[19]

During the course of debate on the proposal on September 4, the House agreed to the Committee amendments, adopted an amendment providing that national emergencies end automatically one year after the declaration date unless the President transmits a message to Congress and prints notice in the *Federal Register* that the emergency is still in effect, and accepted the bill on a 388–5 yea-and-nay vote.[20] The measure was then sent to the Senate and referred to the Committee on Government Operations.[21]

On May 28, 1976, the Senate Special Committee on National Emergencies and Delegated Emergency Powers issued its final report (S. Rept. 94–922). After summarizing its activities and efforts, the Special Committee urged immediate passage of the National Emergencies Act, close congressional committee scrutiny of the statutes exempted from the rescinding provisions of the Act, careful congressional review of future requests for permanent statutory emergency authority, vigilance in detecting potential efforts to bypass or circumvent the intent of the Act, congressional inquiry into emergency preparedness efforts conducted by the Executive, congressional preparation for dealing with a declared emergency (including continuous review of the canon of emergency law), striving to halt open-ended grants of authority to the Executive, more vigorous investigation and oversight of delegated powers, and improvement of accountability procedures with regard to Executive decision-making.[22] The Special Committee's mandate and operational authority terminated on April 30.

The Senate Committee on Government Operations subsequently reported (S. Rept. 94–1168) the National Emergencies Act on August 26 with one substantive and several technical amendments. According to the panel's report:

> With respect to the substantive amendment, following consultations with several constitutional law experts, the committee concluded that section 201(a)

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[17] See *Ibid.*, March 6, 1975 [Daily edition], p. S3202.

[18] U.S. Congress, House Committee on the Judiciary, Subcommittee on Administrative Law and Governmental Relations. *National Emergency Act.* Hearings, 94th Congress, 1st Session. March 6, 13, 19, and April 9, 1975. Washington, U.S. Govt. Print. Off., 1975.

[19] Congressional Record, v. 120, May 21, 1975 [Daily edition], p. H4577.

[20] *Ibid.*, September 4, 1975 [Daily edition], p. H8327–H8341.

[21] *Ibid.*, September 5, 1975 [Daily edition], p. S15373.

[22] U.S. Congress. Senate. Special Committee on National Emergencies and Delegated Emergency Powers. *National Emergencies and Delegated Emergency Powers.* Washington, U.S. Govt. Print. Off., 1976. 38 p. (94th Congress, 2d session. Senate. Report No. 94–922).

> is overly broad, and might be construed to delegate additional authority to the President with respect to declarations of national emergency. In the judgment of the committee, the language of this provision was unclear and ambiguous and might have been construed to confer upon the President statutory authority to declare national emergencies, other than that which he now has through various statutory delegations.
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> The Committee amendment clarifies and narrows this language. The Committee decided that the definition of when a President is authorized to declare a national emergency should be left to the various statutes which give him extraordinary powers. The National Emergencies Act is not intended to enlarge or add to Executive power. Rather the statute is an effort by the Congress to establish clear procedures and safeguards upon him by other statutes.
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> Therefore, the Committee amendment makes no attempt to define when a declaration of national emergency is proper. The amendment simply requires the President to transmit to the Congress and publish in the Federal Register a Presidential declaration of national emergency authorized by other Acts of Congress.[23]

The following day the Senate adopted the bill with all committee amendments and returned the measure to the House.[24] On August 31 the House agreed to the Senate amendments, clearing the proposal for the President's signature.[25]

President Ford signed the bill into law (Public Law 94–412) on September 14, 1976.[26]

Other Emergency powers action

During the course of the adoption of the National Emergencies Act, three other significant emergency powers developments occurred. Although efforts were made to continue the authority, a title of the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2297) granting the President or Congress power to declare a civil defense emergency whenever an attack on the United States occurred or was anticipated expired on June 30, 1974 after the House Committee on Rules failed to report on the measure extending the statute.[27] Thus, a means of declaring an emergency was terminated and statutes activated pursuant to this provision were relegated to permanent dormancy.

By proclamation of February 19, 1976 (41 F.R. 7741), President Ford gave notice that E.O. 9066, providing for the interment of Japanese-Americans during World War II, was cancelled as of the issuance of the proclamation (11 F.R. 1) formally establishing the cessation of the hostilities of World War II on December 31, 1946. Certain statutory authority (18 U.S.C. 1383) relevant to this Executive order is cancelled by the National Emergencies Act.[28]

Also, legislation was adopted (Public Law 94–286) on May 14, 1976, granting the President the authority to order certain selected members of an armed services Reserve component to active duty other than during a state of war or a condition of national emergency. Previously, this authority (10 U.S.C. 673) had been limited to a "time of national emergency declared by the President" or "when otherwise authorized by law."[29]

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[23] U.S. Congress. Senate. Committee on Government Operations. *National Emergencies Act.* Washington, U.S. Govt. Print. Off., 1976. (94th Congress, 2d session. Senate. Report 94–1168), p. 3.

[24] See *Congressional Record,* v. 112, Aug. 27, 1976 : S14840–S14844.

[25] See *ibid.*, Aug. 31, 1976 : H9253.

[26] See *Weekly Compilation of Presidential Documents,* v. 12, Sept. 20, 1976 ; 1340.

[27] See U.S. Congress. House. Committee on Armed Services. *Full Committee Consideration of . . . H.R. 13329. . . .* Hearings, 93d Congress, 2d session July 25, 1974. Washington, U.S. Govt. Print. Off., 1974. 30 p. ; ———. ———. ———. *Extending Civil Defense Emergency Authorities.* Washington, U.S. Govt. Print. Off., 1974. 22 p. (93d Cong., 2d session. House. Report No. 93–1243).

[28] However, not all such authority is cancelled by the statute ; see 10 U.S.C. 2152.

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[29] See U.S. Congress. Senate. Committee on Armed Services. Subcommittee on Manpower and Personnel. *Military Manpower Issues of the Past and Future.* Hearings, 93d Congress, 2d session. August 13 and 14, 1974. Washington, U.S. Govt. Print. Off., 1974, pp. 7–9, 17, 32–36, 38–40; ———. ———. ———. ———; *Reserve Call-Up.* Hearings, 94th Congress, 1st session. July 30, 1975. Washington, U.S. Govt. Print. Off., 1975. 35 p.; ———. ———. ———. *Enabling the President to Authorize the Involuntary Order to Active Duty of Selected Reservists for a Limited Period Without a Declaration of War or National Emergency.* Washington, U.S. Govt. Print. Off., 1975. (94th Congress, 1st session. Senate. Report No. 94–562) 23 p.; ———. House. Committee on Armed Services. *Full Committee Consideration of S. 2115. . . .* Hearings, 94th Congress, 2d session. April 17, 1976. Washington, U.S. Govt. Print. Off., 1976; 4 p.; ———. ———. ———. *Authority For Limited Reserve Mobilization.* Washington, U.S. Govt. Print. Off., 1976. (94th Congress, 2d session. House. Report No. 94–1069) 27 p.; Robert K. Musil. Troops for a Five-Star President. *The Nation,* v. 222, Feb. 28, 1976: 238–241.

II

THE SPECIAL COMMITTEE ON THE TERMINATION OF THE NATIONAL EMERGENCY

AND

THE SPECIAL COMMITTEE ON NATIONAL EMERGENCIES AND DELEGATED EMERGENCY POWERS

1. Initial authorizing resolution
2. Recommended National Emergencies Act
3. Final report

INITIAL AUTHORIZING RESOLUTION OF THE SPECIAL COMMITTEE

[Congressional Record—v. 118, May 23, 1972—pp. S18367–S18369]

SENATE RESOLUTION 304—SUBMISSION OF A RESOLUTION AUTHORIZING EXPENDITURES BY THE SPECIAL COMMITTEE ON TERMINATION OF THE NATIONAL EMERGENCY

(Referred to the Committee on Foreign Relations.)

LET'S END THE NATIONAL STATE OF EMERGENCY

Mr. MATHIAS. Mr. President, on behalf of Senators Pell, Hart, Church, Gravel, Eagleton, Cooper, Stevenson, Williams, Javits, Mansfield, Hartke, Case, Chiles, Cranston, and myself, I submit a resolution which is 20 years overdue. As my colleagues will recall, last year, with the cosponsorship of 15 other Senators, I submitted Senate Concurrent Resolution 27 to establish a special joint committee to study the effects of terminating the state of national emergency declared by President Harry Truman in 1950. Today I am introducing a revised version of that resolution which reflects its consideration by the Senate Foreign Relations Committee, the Department of State, and a variety of concerned citizens and groups throughout the country.

It may surprise some to learn that we are still in a state of national emergency proclaimed in the depth of the Korean War. And that while the Korean War has passed into history, the emergency proclaimed to deal with that war remains in force.

Based on authority granted by the Emergency Banking Act of 1933, a President can, by the simple expedient of declaring a national emergency, assume a vast web of powers rendering the Congress expendable. This is not simply an interesting anachonism without practical force. The powers available to the President under this state of emergency are not trivial—fully some 200 special powers accrue to the President from it. In January, 1968, for example, President Johnson used it to control American investments abroad in an effort to ease that year's balance-of-payments crisis. In February, 1971, President Nixon invoked the same authority to suspend the provisions of the Davis-Bacon Act.

In this past year, we have witnessed a striking application of Presidential emergency powers. With a single speech on August 15, President Nixon did more than months of Senate hearings to dramatize the enormous arsenal of powers within the grasp of the Executive. Wielding authority granted him by law, the President drastically changed the economic course of the Nation and the world. By the time Congress returned three weeks later, it was required to legislate in a radically altered political and economic context.

While the President's new economic policies represent a bold and necessary response to a serious crisis and they have my support, the powers he was able to invoke emphasize anew the scope of authority which Congress has relinquished to the Office of the President. Thus, in adding power over the dollar to his command of American military forces and his influence over mass media, the President has lent support to the conclusion of Professor Duane Lockard, chairman of the Department of Politics at Princeton, that—

> In essence the Presidency has become an elective kingship with decisive power in a broad range of matters . . . He can start a war or end one; he can breathe life into a domestic project or smother it.

This situation is not without legislative precedent. Alas, Congress has frequently been accomplice in its own decline, conceding initiatives to the Executive and tolerating procedural abuses when their ends were agreeable. One need only name the Formosa Resolution of 1955, the Middle East Resolution of 1957, the Cuba Resolution of 1962, and the Gulf of Tonkin Resolution of 1964 to illustrate how readily Congress delivered up to the President large elements of its constitutional jurisdiction.

Mr. President, the resolution which I am introducing today seeks to restore the constitutional balance between the Presidency and the Congress. It establishes a bipartisan Senate committee to study the problems which may arise as the result of terminating our protracted state of national emergency and to consider the necessary or desirable legislative actions toward this end. It is expected that the committee's recommendations would, among other things, have the effect of restoring to Congress its full constitutional authority to regulate commerce, and would clearly define a national emergency. Together with the War Powers bill which was passed by the Senate in April, this would serve to assure that emergency powers would only be applied for the duration of genuine emergencies.

In the effort to restore the constitutional balance between the Executive and Legislative branches of our Government, the War Powers bill and now the emergency powers resolution, represents a good start. We must press forward to see them passed this year. And we must repel any effort to bring them into the arena of partisan politics in this election year. Restoring to Congress its constitutional responsibility is an effort which must be joined by Republicans and Democrats, liberals and conservatives. Can we really afford the cavalier disdain of George Washington Plunkett, a Tammany Hall ward heeler who once asked:

> What's the Constitution among friends?

I believe not. I believe it is now our task to press on in trying to make the Constitution work—among friends.

Mr. President, upon introduction of my emergency powers resolution last year, I spoke at length about the long and lamentable history of accumulation of power in the office of the President. I do not wish to take up my colleague's time today by reiterating my remarks, but I ask unanimous consent that they be printed in the Record at this point, together with the text of my resolution.

[There being no objection, the remarks and resolution were ordered to be printed in the Record, as follows:]

REMARKS OF MR. MATHIAS

Mr. MATHIAS. Mr. President, last year, Congress revoked the Gulf of Tonkin Resolution of 1964. It was a first step in the long-overdue effort to restore to Congress its responsibilities under the Constitution for questions of war and peace.

In February of this year, Senator Javits introduced S. 731, A Bill to Regulate Undeclared War. Also in February, Senator Church introduced Senate Joint Resolution 48 to repeal the Formosa Resolution of 1955. I was pleased to co-sponsor both. In the next weeks, I shall introduce legislation to repeal the Middle East Resolution of 1957 and the Cuba Resolution of 1962.

Today, I rise to present a Senate Concurrent Resolution aimed at terminating the state of national emergency proclaimed by President Truman in December, 1950, in the depth of the Korean War. It is a sad paradox that this country has remained officially in a state of emergency since that time. Indeed, it may be useful at this point briefly to review how Congress—with barely a whimper—relinquished important parts of its constitutional authority to the office of the President.

On May 9, 1933, at a moment of dire Depression emergency, Franklin D. Roosevelt convened the Congress and demanded, in effect, that it revamp the Constitution before midnight. The purpose of the reform was to make Congress—and the Constitution—optional at the discretion of the President, as the national interest required.

The demand came as part of the Emergency Banking Act, an omnibus bill reorganizing the nation's then collapsing banking system and retroactively legitimizing the President's Bank Holiday proclamation of three days before. Referred to the Banking and Currency Committee—with instructions that it be reported out in an hour—the bill was not printed and was not available for Senators to read. Senator Long complained that he did not know what was in it until it was read by the clerk. Most Senators indicated that they had grave reservations about what they understood to be the bill's provisions and Senator Long protested the extraordinary powers it granted to the President. But in the extremity of the crisis at hand, Congress felt it had to act immediately as the President demanded. The bill was passed by both Houses before midnight and the American constitutional Republic has been in its Damoclean shadow ever since.

The key provision, not much remarked by the Congress at the time, came in an amendment to section 5b of the Trading With the Enemy Act of 1917. As enacted in 1917, section 5b shifted from Congress to the President the power to regulate trade and financial transactions between Americans and foreigners *in wartime.* The 1933 amendment to 5b authorized the President—by the simple expedient of declaring a national emergency—to assume in peacetime these extensive wartime emergency powers.

By declaring in the 1933 amendment that the President could assume emergency powers by declaration in peacetime, Congress established a principle with reverberations going far beyond the legislation at hand. For the courts have interpreted the principle as creating a virtually unlimited Executive prerogative that now applies to some 200 laws granting special powers to the President during national emergencies. But neither Congress nor the courts has set criteria to define the kind of crisis which would justify invocation of these multifarious powers. Since 1933 they have been available essentially as the President wishes.

In accord with President Roosevelt's approach, the President is left to determine by himself when a national emergency exists and when it ends—when the Executive should have access to the near dictatorial authority conveyed in emergency legislation. The President decides when he should share power with Congress as the Constitution prescribes, and when Congress can be made optional by proclamation.

This assignment of emergency powers has worked very smoothly over the years. Since that dire extremity of 1933, there have been six Presidents—four Democrats and two Republicans. They have disagreed on many issues. But they have been unanimous on the question of when the country is in a state of national emergency and when the Congress, on a wide range of issues, is optional. Their answer, quite simply put—in a word—is: always. In the last 37 years, the country has passed through many vicissitudes of war and peace. But Presidential powers have been continuously "at war." Not once during that period has a President allowed his special powers to lapse. The result, described by Jeffrey G. Miller and John

R. Garson in an excellent article in the February, 1970, issue of the *Boston College Industrial and Commercial Law Review*, is that "some 60 percent of the nation's population have lived their entire lives under a continuous unbroken chain of national emergencies."

A court did judicially acknowledge—in 1962—that the Depression had ended. But no authority has yet recognized the end of the Korean emergency, proclaimed by President Truman on December 16, 1950, and still in effect today. Since the President declared with reference to Korea that "world conquest by communist imperialism is the goal of the forces of aggression," the State Department has interpreted the emergency as meaning the Cold War.

This interpretation, however, has not limited the emergency powers to military matters affecting the protracted conflict with the Communists. The Korean authority, in fact, was most recently invoked in 1968 in relation to our economic competition with our European allies. President Johnson felt he would have difficulty securing from Congress the broad powers he needed to deal with the deficit which had been emerging for several years in the nation's balance of payments. Yet the Constitution clearly reserves to the Legislative branch all powers for regulating foreign commerce. So the President invoked the emergency powers granted in 1950 in relation to the Korean War and signed Executive Order 11387, "Governing Certain Transfers Abroad." The Department of Commerce immediately issued the Foreign Direct Investment Regulations (FDIR). The Executive Order and the FDIR restrict the amounts of capital that American investors may transfer to or accumulate in foreign affiliates and compel repatriation of short-term liquid balances such as foreign bank deposits.

Without citation of the Korean War powers, these measures clearly represent an unconstitutional encroachment on legislative authority. The courts have upheld them, however, and they remain the law of the land. It is currently the law of the land, therefore; that the state of national emergency proclaimed by President Truman in 1950 in relation to the Korean conflict can be invoked in relation to a balance of payments deficit 18 years later. Similarly, regulations against gold hoarding, activated by the Depression emergency, are continued under the 1950 proclamation. Other measures invoked under section 5b pursuant to the Korean proclamation include the Foreign Assets Control Regulations, the Egyptian Assets Control Regulations, and the Cuban Assets Control Regulations. The Cuban trade embargo of 1962 was also based in part on the 1950 emergency.

Among the nearly 200 other emergency laws are measures permitting the President to sell stocks of strategic materials, revoke leases on real and personal property, suspend rules and regulations applicable to broadcasting stations, detain enlisted troops beyond the term of their enlistments, detail military men to the governments of other countries, and exercise control over consumer credit. Among hundreds of local properties available to the Executive, the President may take over parts of Howard University, and in my own state of Maryland, he may close Fort McHenry—the birthplace of the "Star Spangled Banner"—and "use it for such period thereafter as the public needs may require."

These powers infringe on so many crucial constitutional rights and principles that collectively they may be seen as placing our system of democratic government in jeopardy. Certainly the deprivation of rights and property is authorized without due process. But perhaps most important, these measures threaten the constitutional balance of powers between the Executive and Legislative branches. Because a state of official emergency has continued since 1933—and has been upheld by the courts to validate actions unrelated to the original crisis—the national emergency powers have accumulated and become institutionalized in the Executive. The Presidency, already enhanced by modern trends, has been further aggrandized by the paradox of the continuous emergency.

Unless we accept the principle of an optional Constitution and an optional Congress, we must reject the concept of national emergencies declarable by the President at his discretion in peacetime without termination dates. Since this concept has been upheld in essence by the Courts, it is up to the Congress to recover by legislation the constitutional role that it has allowed the Executive to usurp. We must reassert the principle that emergency powers are available only for brief periods when Congress is unable to act and for purposes directly related to the emergency at hand.

This is easier said than done. We discover that the continuous and cumulative and institutionalized emergency is also almost irrevocable. So many Executive agencies and procedures are rooted in emergency powers that it is extremely difficult to rescind them without major administrative disruptions. With this in mind, the distinguished Majority Leader, Mr. Mansfield, joined with me during the last session in S.J. Resolution 166, a resolution which, among other things, proposed the creation of a special committee to explore with the executive the consequences of terminating the Korean Emergency. In the aftermath of the Cambodia incursion, however, our proposals were not acted upon. And so I am now reintroducing the resolution as a Senate Concurrent Resolution. It calls for the establishment of a commission to study and make recommendations terminating the state of national emergency.

It is to be expected that the commission's recommendations would, among other things, have the effect of restoring to Congress its full constitutional authority to regulate commerce, and would clearly define a national emergency. Together with S. 731, An Act to Regulate Undeclared War, which was introduced in February by the distinguished Senator from New York, Mr. Javits, this would serve to assure that emergency powers would only be applied for the duration of genuine emergencies. The Constitution did not envision a state of national emergency to be the normal state of affairs.

Under the best of circumstances, the Congress will not find it easy to maintain its historic constitutional role in the modern age. Modern communications, national interdependence, and international involvement coverage to enhance the Presidency; real emergencies continually arise requiring the kind of decisive response the Executive is best equipped to give. But if the Congress allows these national Executive advantages to be expanded by special emergency powers responding to unspecified emergencies without determination or limit, the balance of powers between the branches of our government may be irreparably broken.

I believe that we do face today a national emergency—even a paradoxically continuous one. It emerged during the Depression and has been with us for several decades. It is a crisis that throws our whole system of constitutional government into jeopardy. This emergency—if I may use the term so loosely—is the atrophy of Congress. It is not an emergency which calls for the decisive exercise of Executive powers. It calls for the decisive recovery of legislative powers.

Only Congress can redeem itself; but in serving itself, it can also save the Constitution. And I believe that to save the Constitution is to save the most precious heritage of our country.

S. Res. 304

Whereas, the existence of the state of national emergency proclaimed by the President on December 16, 1950, is directly related to the conduct of United States foreign policy and our national security, now, therefore, be it

Resolved, That (a) there is hereby established a special committee of the Senate to be known as the Special Committee on the Termination of the National Emergency (hereinafter referred to as the "Special Committee").

(b) The Special Committee shall be composed of eight Members of the Senate equally divided between the Majority and Minority parties to be appointed by the President of the Senate, four of whom shall be members of the Committee on Foreign Relations.

(c) The Special Committee shall select a chairman and vice chairman from among its members. A majority of the members of the Special Committee shall constitute a quorum thereof for the transaction of business, except that the Special Committee may fix a lesser number as a quorum for the purpose of taking testimony. Vacancies in the membership of the Special Committee shall not affect the authority of the remaining members to execute the functions of the Special Committee.

Sec. 2. (a) It shall be the function of the Special Committee to conduct a study and investigation with respect to the matter of terminating the national emergency proclaimed by the President of the United States on December 16, 1950, and announced in Presidential Proclamation Numbered 2914, dated the same date. In carrying out such study and investigation the Special Committee shall:

(1) consult and confer with the President and his advisers;

(2) consider the problems which may arise as the result of terminating such national emergency; and

(3) consider what administrative or legislative actions might be necessary or desirable as the result of terminating such national emergency, including consideration of the desirability and consequences of terminating special legislative powers that were conferred on the President and other officers, boards, and commissions as the result of the President proclaiming a national emergency.

Sec. 3. For the purposes of this resolution the Special Committee is authorized from date of agreement to this Resolution through February 28, 1973, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, (3) to hold such hearings, (4) to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate, (5) to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, (6) to take such testimony, (7) to procure the services of individual consultants or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946, as amended, and (8) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimburseable basis the services of personnel of any such department or agency.

Sec. 4. The expenses of the Special Committee under this resolution shall not exceed $100,000, of which amount not to exceed $15,000 shall be available for the procurement of the services of individual consultants, or organizations thereof as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended.

Sec. 5. The Special Committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1973.

Sec. 6. Expenses of the Special Committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the Special Committee.

93d Congress
2d Session
SENATE
Report
No. 93-1170

A RECOMMENDED NATIONAL EMERGENCIES ACT

September 24, 1974.—Ordered to be printed

Mr. Church, from the Special Committee on National Emergencies and Delegated Emergency Powers, submitted the following

INTERIM REPORT

By the Special Committee on National Emergencies and Delegated Emergency Powers in Support of a Recommended National Emergencies Act

The Special Senate Committee on National Emergencies and Delegated Emergency Powers, pursuant to Senate Resolution 304, June 23, 1972, Senate Resolution 9, January 6, 1973, and Senate Resolution 242, January 23, 1974, submits herein an interim report in support of recommended legislation: A National Emergencies Act (see attachment). Because of its critical importance, the Special Committee recommends that this legislation, approved unanimously by its eight members, be acted upon at the earliest opportunity.

It is the Special Committee's view that legislative action is required because it is distressingly clear that our Constitutional government has been weakened by 41 consecutive years of emergency rule. There are now in effect four Presidentially proclaimed states of national emergency which give the President the authority to rule the United States outside of normal Constitutional processes: The national emergency declared by President Roosevelt in March 1933 to fight the Great Depression, the national emergency proclaimed by President Truman in December 1950 during the Korean conflict, the national emergency declared by President Nixon, March 23, 1970 to handle the Post Office strike, and the August 15, 1971 national emergency proclaimed to meet balance of payments and other international economic problems.

A majority of the American people have lived all their lives under emergency government. During this period of four decades, the President, through what is now over 470 legally delegated powers, has had at hand the power to rule the United States outside of normal Constitutional processes.

There is no longer any valid reason for emergency rule to continue. In the judgment of the Special Committee, our government would be strengthened by bringing to an end all declared states of national emergency presently in existence, and this should be done as soon as possible.

The four proclamations of national emergency, together with the authority delegated by emergency powers statutes, have provided the President—any President—with extraordinary powers, among others, to seize property and commodities, organize and control the means of production, call to active duty 2.5 million reservists, assign military forces abroad, seize and control all means of transportation and communication, restrict travel, and institute martial law, and, in many other ways, manage every aspect of the lives of all American citizens.

A few examples from the 470 emergency statutes now in force should make it clear what kinds of extraordinary discretionary power have been delegated to the President:

> Statute 10 USC 712 permits the President "during a war or a declared national emergency" to "detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters" in any foreign country.
>
> During the war in Southeast Asia and during the Berlin airlift on several other occasions, the Department of Defense used a little known law of more than 100 years' vintage, The Feed and Forage Act of 1861, 41 USC 11, to fund certain military activities not previously authorized by the Congress. The original intent of the Feed and Forage Act was to enable the United States cavalry posted on the Western frontier to requisition feed for its horses and other supplies when Congress was out of session and thus unable to provide the necessary funds. This law was kept on the books and was used for deficiency spending for food, medicines, clothing and other similar supplies when Congress was not in session. In recent years this law has been used to spend funds not authorized by the express will of the Congress even when in session.
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> Under 10 U.S.C. 333, the President can use the militia or armed forces to suppress "conspiracy," if it is likely that "any part" of the people in a state will be deprived of some constitutional right, and the state itself refuses to act. Under this statute, the President conceivably could circumvent Article IV, Section 4, of the Constitution even before waiting for state legislatures or state executives to request Federal troops.
>
> Under 18 USC 1383, the President has authority to declare any part or all of the United States military zones. People in such zones can be jailed for a year for violating any "executive order of the President." Would these arrests be reviewable in court? It is not clear. Judicial review of agency actions is guaranteed in 5 USC 702, but 5 USC 701 excludes actions taken under declarations of martial law.

A President could make use of Public Law 733, which expresses the determination of the United States to prevent "by whatever means may be necessary including the use of arms," any "subversive" activities by the government of Cuba.

Under 47 USC 308, the Federal Communications Commission could, during a national emergency, modify existing broadcast licenses under terms it might prescribe.

Under 47 USC 606, the President can amend "as he sees fit" the rules and regulations of the Federal Communications Commission and, in particular, can "cause the closing of any facility or station for wire communications."

If the President finds the nation "threatened by attack," he could, under 44 USC 1505, cease to publish his regulations in the *Federal Register* if he determines that it is "impracticable." This could open the way to promulgation of secret laws.

At the present time, only a small portion of these 470 delegated emergency powers is being used. This is proof that there is no longer an "emergency" that requires extraordinary delegations of power. In the view of the Special Committee, this body of potentially authoritarian power remains a hazard to democratic government. Aggressive Presidents, permissive Congresses, and a long series of successive crises, have all contributed to the erosion of the structure of divided powers, the bedrock of our Constitutional system of government.

The study undertaken by the Special Committee of how the four states of national emergency came into being, and how the over 470 emergency statutes became the law of the land, provides a disturbing explanation of the deterioration of law-making during the past four decades.

In the particular area of emergency powers statutes, the constitutionally prescribed roles of the Legislative and Executive branches have been reversed. The Special Committee's studies show that in far too many instances, the Executive branch itself drafted the laws and cast them in such form as to give itself maximum advantage. It is understandable that the Executive branch, in drafting laws granting power to itself, did not provide either for oversight or for termination by Congress. It is also not surprising that most of these laws were passed in times of crisis, when because of the urgency, Congress acted hastily without real scrutiny, without thorough hearings, and without the deliberation that such legislation should have demanded. For these reasons, Congress has not exercised its responsibilities prudently; it has not even reserved for itself the means to recoup its lost powers.

Now, in a time of relative world peace, Congress has the opportunity to draw back and reexamine how profligately we have dealt with war and other emergencies. Our sobering experience with the undeclared Korean and Vietnam wars heightens the necessity to understand the means available within the Constitution, to meet crisis situations affecting our national security.

The Special Committee has held extensive hearings seeking the views and advice of the country's most distinguished authorities on Constitutional government in time of crisis. In addition to scholarly authorities in the fields of political science and the law, the Special

Committee sought the counsel of all the former Attorneys General and two former Supreme Court Justices, as well as many distinguished lawyers. On the basis of the suggestions and perspective gained from these hearings, and from two intensive staff studies of emergency power statutes and Executive Orders, and upon the basis of the data, advice and counsel supplied by the Executive branch, the Special Committee has drafted legislation which would provide:

(1) For the termination of the present states of national emergency;

(2) For the establishment of a regularized procedure for the use of delegated emergency power in future emergencies. The President could declare a national emergency and in his public proclamation would cite the specific statutory powers he requires to meet the emergency. The Congress would have six months to act to affirm or reject. If Congress takes no action, the state of national emergency would lapse after six months. The Congress could extend any state of national emergency by affirmative vote. But no extension could last for more than six months without another affirmative vote by the Congress.

(3) For a means of providing accountability for actions taken pursuant to emergency power statutes in any future emergency; and

(4) For a listing of those statutes which both the Executive branch and the respective standing committees of the Senate agree can be repealed because they are obsolete.

The recommended legislation, entitled the "National Emergencies Act," would not come into effect until nine months after its date of enactment, in order to give Executive branch, agencies and Congressional Committees sufficient time to work out unresolved issues. It is clear that it may be necessary to cast into permanent form certain statutes which now are written in a form contingent upon the existence of a state of national emergency. The grace period would permit all such matters to be resolved through the normal legislative processes.

The record of cooperation between the Legislative and Executive branch in working toward a legislative remedy has been exemplary. Every department and agency of the Executive branch has cooperated with requests from the Special Committee for information in their areas of jurisdiction. This cooperation, particularly on the part of the Department of Defense and the Department of Justice, under three Secretaries of Defense and four Attorneys General respectively, has been a model of how the two branches can work together. The Special Committee, for example, would still be laboring through 87 volumes of the Statutes-at-Large to find out exactly what laws were involved, were it not for the assistance provided by the U.S. Air Force which had fortuitously put the U.S. Code into its LITE computer system located at a base in Colorado. The General Services Administration and particularly the Federal Register of the National Archives, provided invaluable help in bringing substance and understanding into the shadowy world of Executive Orders issued pursuant to states of emergency. The Justice Department, largely through the counsel of Attorneys General themselves and the Office of Legal Counsel, has given expert advice to the Special Committee, and we gratefully acknowledge the importance of their assistance.

The Office of Management and Budget has helped the Special Committee by providing a detailed evaluation of the current utility of emergency statutes now in force. It is upon the basis of the Executive branch's coordinated evaluation of these statutes and their evaluation by the standing committees that the Special Committee was able to draft a remedy in accord with the Constitutional responsibility of Congress to make laws. The Special Committee is confident that Congress should now proceed forthwith to end the four existing states of national emergency, repeal certain laws that both the Executive branch and Congress believe obsolete, and to legislate a definite procedure to be used in the event of future national emergencies.

It has been an underlying premise of the Special Committee that the findings contained in the Youngstown Steel Case of 1952, particularly the opinion of Justice Jackson, provide sound and pertinent guidelines for the governance of emergency powers. Justice Jackson, supporting the majority opinion that the "President's power must stem either from an act of Congress or from the Constitution itself," wrote:

> * * * emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the "inherent powers" formula. Nothing in my experience convinces me that such risks are warranted by any real necessity, although such powers would, of course, be an executive convenience.
>
> In the practical working of our Government we already have evolved a technique within the framework of the Constitution by which normal Executive powers may be considerably expanded to meet an emergency. Congress may and has granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in war or upon proclamation of a national emergency. * * *
>
> In view of the ease, expedition and safety with which Congress can grant and has granted large emergency powers, certainly ample to embrace this crisis, I am quite unimpressed with the argument that we should affirm possession of them without statute. Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction.* * *
>
> But I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. A crisis that challenges the President equally, or perhaps primarily, challenges Congress. If not good law, there was worldly wisdom in the maxim attributed to Napoleon that "The tools belong to the man who can use them." We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers. * * *

> With all its defects and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.

In our view, Congress should provide statutory guidelines to assure the full operation of Constitutional processes in time of war or emergency. This is the best prescription to avoid any future exercise of arbitrary authoritarian power. For as the Youngstown Case decided, where there is a statute, the Executive is obliged to use the statutory remedy; where there are no lawful statutory guidelines is to invite so-called inherent powers to come into play. There is without question a need, in the view of the Special Committee, to provide the Executive branch with an effective, workable method for dealing with future emergencies in accord with Constitutional processes. The Special Committee has sought to do this in fulfillment of its mandate.

The Special Committee, therefore, respectfully submits to the Senate, through the leadership, a legislative proposal with the recommendation that it be acted upon as soon as possible.

During the past year, the Special Committee requested the assistance of the Majority and Minority Leaders in the preparation of guidelines for procedural actions to be taken on the part of the Senate in possible future emergencies. The actions already taken by the leadership, in the view of the Special Committee, meet the needs that might reasonably be required by future emergencies.

In order to assist the Senate in its consideration of the recommended legislation, the Special Committee urges members of the Senate to examine the following Special Committee documents which detail the many problems and dangers that emergencies pose to Constitutional government, the nature of the American experience, and the reasons for our recommended course of action.

1. "Emergency Powers Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency"; September 1973. This compilation of emergency powers delegated by statute to the President for use in times of war or national emergency contains a brief introduction to the history of emergency rule in the United States and the adverse effects that continued emergency rule has upon Constitutional government.

2. "Executive Orders in Times of War and National Emergency"; June 1974. This compilation of Executive Orders issued pursuant to war or national emergency contains a brief historical review of how Presidents give orders to execute the law. The report documents the lack of legal accountability in many important areas of public policy for orders given by the President. This is an area that requires remedial legislation.

3. "Hearings: Part 1—Constitutional Questions Concerning Emergency Powers"; April 11, 12, 1973. Testimony was taken from political scientists Dr. Robert S. Rankin, Duke University; Professor Cornelius P. Cotter, University of Wisconsin; Professor J. Malcolm Smith, California State University; and legal scholars Dr. Adrian S. Fisher, Georgetown University Law Center and Dr. Gerhard Casper, University of Chicago.

"Hearings: Part 2—Views of Former Attorneys General"; July 24, 1973. Witnesses were Justice Tom C. Clark, Nicholas deB. Katzenbach, and Ramsey Clark.

"Hearings: Part 3—Constitutional Questions Concerning Emergency Powers"; November 28, 1973. Former Attorney General Elliot L. Richardson and former Solicitor General of the U.S. Erwin N. Griswold, testified.

[Attachment]

RECOMMENDED LEGISLATION

Approved Unanimously by the Special Committee July 11, 1974

To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act."

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

TERMINATING POWERS AND AUTHORITIES

SEC. 101. (a) All powers and authorities conferred by law upon the President, any other officer or employer of the Federal Government, or upon any department, agency, independent establishment, or any other body of the Federal Government, and all powers and authorities conferred by any Executive order pursuant to law as a result of the existence of any national emergency in effect immediately prior to the two hundred and seventy-first day after the date of enactment of this Act, are terminated on such two hundred and seventy-first day.

(b) For the purpose of this section, the words "any national emergency in effect" mean a general declaration of emergency made by the President pursuant to a statute authorizing him to declare a national emergency.

TITLE II—FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) In the event the President finds that the proclamation of a national emergency is essential to the preservation, protection, and defense of the Constitution, and is essential to the common defense, safety, or well-being of the territory and people of the United States, the President is authorized to proclaim the existence of a national emergency. Such proclamation shall thereupon be made public, and shall be published immediately in the *Federal Register*.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect with respect to national emergency (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

TITLE III—DECLARATIONS OF WAR BY CONGRESS

SEC. 301. Whenever Congress declares war, any provisions of law conferring powers and authorities to be exercised during time of war or a national emergency shall be effective from the date of such declaration and remain in effect only in accordance with the provision of Title IV of this Act.

TITLE IV—FUTURE NATIONAL EMERGENCIES

EXERCISING EMERGENCY POWERS AND AUTHORITIES

SEC. 401. (a) When the President declares a national emergency, or Congress declares war, any provisions of law conferring powers and authorities to be exercised during such a national emergency or during a war declared by the Congress shall be effective and remain in effect with respect to such emergency or war only in accordance with this Act.

(b) When the President declares a national emergency, no powers made available by statute for use in the event of an emergency shall become operative unless and until the President specifies by Executive order the specific provisions of law under which he proposed that he, or other officers of the Executive branch, will act. Such specification may be made either in the original declaration of a national emergency, or by subsequent order, but no power granted in the event of the declaration of a national emergency shall be available unless or until it has been so specified by the President. All such specifications shall be published immediately in the *Federal Register*, and a copy of any declaration of national emergency, and of such specifications, shall be transmitted immediately to Congress.

LIMITATIONS ON NATIONAL EMERGENCIES DECLARED BY PRESIDENT

SEC. 402. Any national emergency declared by the President in accordance with this title shall terminate at the end of the one hundred and eightieth day after the date the national emergency was declared, and any of the provisions of law referred to in section 401(a) of this Act shall not be effective after the end of such one hundred and eightieth day unless Congress by concurrent resolution—

(1) terminates such emergency on an earlier date; or

(2) continues such emergency to a day specified in the concurrent resolution, beyond the end of such one hundred and eightieth day.

Any national emergency declared by the President shall then be terminated on the date specified in any such concurrent resolution referred to in clauses (1) and (2) of this section, and any such provisions of law shall not be effective after such specified date with respect to that emergency.

TERMINATING AND CONTINUING NATIONAL EMERGENCIES AND WARS

SEC. 403. (a) In no event shall any provision of law referred to in section 401(a) of this Act remain in effect beyond the end of the one hundred and eightieth day following the date of the declaration of the emergency or war unless, in the case of a declaration of war by Congress, if such declared war has not been terminated in accordance with Constitutional processes.

(b) The provisions of sections 401 and 402 of this Act and subsection (a) of this section shall apply to any subsequent declaration of a national emergency or war made with respect to the same emergency or war under subsection (a) of this section.

TITLE V—MISCELLANEOUS

ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 501. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file, and an index thereof, of all Executive orders by the President, including all instances of the exercise by the President of any power conferred on him by statutes and the Constitution; all rules and regulations, by whatever name called, promulgated by any Executive department, administration, independent establishment, board, commission, official, group of officials, or other rulemaking authority; and all other rules, regulations, orders, by whatever name called, made directly or indirectly under the expressed or implied authority of the Constitution or any Act of Congress with respect to the declarations of national emergency or war. The President shall transmit to the House of Representatives and the Senate and to the appropriate committees of the Congress the texts of each order, rule, or regulation, by whatever name called, promulgated by any Executive department, administration, independent establishment, board, commission, official, group of officials, or other rulemaking authority; and all other orders, rules, and regulations, by whatever name called, made directly or indirectly under expressed or implied authority of the Constitution or any Act of Congress with respect to the declaration of national emergency or war, as soon as practicable after that order, by whatever named called, has been issued.

(b) Any such order, rule, or regulation which conforms with procedures established by law, shall be transmitted to the House of Representatives and the Senate and to the appropriate committees of Congress under means to assure its proper confidentiality.

TITLE VI—REPEAL OF CERTAIN EMERGENCY POWER STATUTES

Sec. 601. Except with respect to the rights and duties that matured, penalties that were incurred, and proceedings that were begun, prior to the date of enactment of this Act, the following provisions of law are repealed:

(7 U.S.C. 1741)
(7 U.S.C. 1742)
(7 U.S.C. 1743)
(7 U.S.C. 1744)
(7 U.S.C. 1745)
(7 U.S.C. 1746)
(7 U.S.C. 1747)
(8 U.S.C. 1481(a)(10))
(10 U.S.C. 2667(b)(4))
(10 U.S.C. 4025)
(10 U.S.C. 9025)
(12 U.S.C. 95)
(12 U.S.C. 95(a))
(12 U.S.C. 249)
(12 U.S.C. 1703)
(12 U.S.C. 1705)
(12 U.S.C. 1748b(a))
(16 U.S.C. 831d(m))
(18 U.S.C. 1383)
(26 U.S.C. 168)
(41 U.S.C. 101)
(41 U.S.C. 102)
(41 U.S.C. 103)
(41 U.S.C. 104)
(41 U.S.C. 105)
(41 U.S.C. 106)
(41 U.S.C. 107)
(41 U.S.C. 108)
(41 U.S.C. 109)
(41 U.S.C. 110)
(41 U.S.C. 111)
(41 U.S.C. 112)
(41 U.S.C. 113)
(41 U.S.C. 114)
(41 U.S.C. 115)
(41 U.S.C. 116)
(41 U.S.C. 117)
(41 U.S.C. 118)
(41 U.S.C. 119)
(41 U.S.C. 120)
(41 U.S.C. 121)
(41 U.S.C. 122)
(41 U.S.C. 123)
(41 U.S.C. 124)
(41 U.S.C. 125)
(42 U.S.C. 211b)
(42 U.S.C. 1592)
(50 U.S.C. 9(e))
(50 U.S.C. App. 1742).

94TH CONGRESS
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SENATE

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No. 94-922

NATIONAL EMERGENCIES AND DELEGATED EMERGENCY POWERS

FINAL REPORT

OF THE

SPECIAL COMMITTEE ON NATIONAL EMERGENCIES AND DELEGATED EMERGENCY POWERS

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PREFACE

With this Final Report, the Special Committee on National Emergencies and Delegated Emergency Powers (formerly the Special Committee on the Termination of the National Emergency) concludes its three year existence. The Committee regrets that legislative delay has made it necessary to submit this document before final passage of the National Emergencies Act. Only when that legislation has been enacted into law will the work of the Committee truly be finished.

We would like to take this opportunity to thank Senators Philip A. Hart, Claiborne Pell, Adlai E. Stevenson III, Clifford P. Case, James B. Pearson, and Clifford P. Hansen for the spirit of cooperation and non-partisanship which has made the work of the Committee so successful.

We would also like to express our gratitude to the many other people who have helped the Committee complete its work. In particular, we wish to thank the following people for their valuable assistance: Lester S. Jayson, the director of the Congressional Research Service of the Library of Congress; Joseph E. Ross, head of the American Law Division of CRS; and especially Raymond Celada of the American Law Division and his able assistant, Charles V. Dale and Grover S. Williams; Jack Goldklang of the Office of Legal Counsel, Department of Justice; Paul Armstrong of the General Accounting Office, and Linda Lee, research aide. Dr. Harold Relyea of the Library of Congress continually provided valuable assistance in addition to writing an informative and useful history of American government in times of emergency.

We wish to commend Staff Directors William G. Miller and Jerry M. Brady for their leadership and the other staff members for their diligence in completing the work of the Committee. Over the three-year period, the staff included: Thomas A. Dine, Audrey H. Hatry, Martha E. Mecham, Roland B. Moore, III, Patrick M. Norton, William K. Sawyer, Patrick A. Shea, Naldeen McDonald, Yvonne McCoy, and Gayle D. Fitzpatrick.

Finally, we would like to give credit to the staff members responsible for this Final Report and the report on emergency preparedness which is included in the Appendix. We thank William K. Sawyer for writing these reports, Jerry M. Brady for editing them, and Gayle D. Fitzpatrick for administrative support.

Frank Church,
Charles McC. Mathias, Jr.,
Cochairmen.

INTRODUCTION

The Special Committee on National Emergencies and Delegated Emergency Powers ends its work with an emphatic plea that the National Emergencies Act, H.R. 3884, be passed as soon as possible. The legislation, which represents the culmination of three years of work by the Committee, will both terminate special powers possessed by the President as a result of existing states of national emergency and establish procedural guidelines for the handling of future emergencies with provision for regular Congressional review. The bill should end the disarry that has characterized emergency laws and procedures in the United States.

The legislation is long overdue. A majority of Americans alive today have lived their entire lives under emergency rule. Since 1933, protections and procedures guaranteed by the Constitution have, in varying degrees, been abridged by Executive directives whose legality rests on the continued existence of Presidentially proclaimed states of emergency. For more than forty years, emergency authority intended for use in crisis situations has been available to the Executive. The President has had extraordinary powers—powers to seize property and commodities, seize control of transportation and communications, organize and control the means of production, assign military forces abroad, and restrict travel.

This dangerous state of affairs is a direct result of Congress' failure to establish effective means for the handling of emergencies and its willingness to defer to Executive branch leadership. In the face of the wars, emergencies, and crises and determined Presidents of the past forty years, the Congress, through its own actions has transferred awesome magnitudes of power to the Executive without ever examining the cumulative effect of that delegation of responsibility. It has tolerated and condoned Executive initiatives without fulfilling its own constitutional responsibilities. It has in important respects permitted the Executive branch to draft and in large measure to make the law. This has occurred despite the constitutional responsibility conferred on Congress by Article I, Section 8 of the Constitution which states that it is Congress that "makes all Laws. . . ."

Passage of the National Emergencies Act will be a major step toward restoring Congress to its proper legislative role. The legislation represents significant progress in checking the growth of Executive power and returning the United States to normal peacetime processes. The measure is vital in insuring that the United States travels a road marked by legislative oversight and carefully constructed legal safeguards.

History of the Special Committee

Interest in the question of emergency powers stems from the United States' experience in the Viet Nam War and the incursion into Cambodia. The President's ability to commit Americans to warfare without any Congressional declaration of a state of war disturbed many Senators.

In 1971 Senator Charles McC. Mathias, Jr. of Maryland submitted Senate Concurrent Resolution 27 to establish a special joint committee to study the effect of terminating the only emergency known to be in existence at the time, that declared by President Truman in 1950 during the Korean War. On May 23, 1972, Senator Mathias and Senator Frank Church of Idaho introduced Senate Resolution 304, which called for the creation of the Senate Special Committee on the Termination of the National Emergency. The Senate Foreign Relations Committee, after hearings and executive comments, reported the resolution favorable on June 13, 1972. The bill subsequently passed the Senate, and on September 18, 1972, an equal number of majority and minority party members were appointed to the newly-formed Special Committee. Senators Church and Mathias became co-chairmen, and Senators Hart, Pell, Stevenson, Case, Pearson, and Hansen were also appointed.

On January 6, 1973, the Special Committee began its work under the authority of S. Res. 9 and the 93rd Congress. The mandate of the Committee was:

> to conduct a study and investigation with respect to the matter of terminating the national emergency proclaimed by the President of the United States on December 16, 1950, as announced in Presidential Proclamation Numbered 2914, dated the same date.

In conducting its study, the Committee was to:

> (1) consult and confer with the President and his advisers;
>
> (2) consider the problems which may arise as the result of terminating such national emergency; and
>
> (3) consider what administrative or legislative actions might be necessary or desirable as the result of terminating such national emergency, including consideration of the desirability and consequences of terminating special legislative powers that were conferred on the President and other officers, boards, and commissions as the result of the President proclaiming a national emergency.

From the start, the work of the Committee was marked by nonpartisanship and its efforts facilitated by the cooperation of the Executive branch. The Committee staff met with Attorney General Kleindienst as early as January 17, 1973, and enlisted the help of the Department of Justice. A special task force was established in the White House to look into the question of emergency powers.

Executive cooperation was important because of the rudimentary state of knowledge of emergency laws and procedures at that time. The Special Committee knew that the Truman Korean War Emergency was still in existence and that at least 200 special powers had accrued to the President over the years. The investigators knew that President Johnson had used emergency powers in January, 1968, to control American investments abroad in an effort to ease that year's balance-of-payments crisis, and that President Nixon had invoked the same authority in February, 1971, to suspend the provisions of the

Davis-Bacon Act. Yet, the Special Committee did not know the full story.

Committee's Findings

The Committee quickly discovered that disorder enveloped the whole field of emergency statutes and procedures. Not one but four emergency proclamations remained in force. In addition to the national emergency proclaimed by President Truman on December 16, 1950, the following declarations of emergency remained in force:

> the national emergency declared by Franklin Roosevelt on March 9, 1933, to cope with the current banking crisis;
>
> the national emergency declared by Richard Nixon on March 23, 1970, to deal with the Post Office strike;
>
> the national emergency declared by Richard Nixon on August 15, 1971, to implement currency restrictions and to enforce controls on foreign trade.

The continuation of these states of emergency was significant, since any declaration of emergency triggers numerous laws which, taken together, give the President extraordinary power. The following laws are illustrative:

> Statute 10 USC 712 permits the President "during a war or a declared national emergency" to "detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters" in any foreign country.
>
> Under 10 USC 333, the President can use the militia or armed forces to suppress "conspiracy," if it is likely that "any part" of the people in a state will be deprived of some constitutional rights, and the state itself refuses to act. Under this statute, the President conceivably could circumvent Article IV, Section 4, of the Constitution even before waiting for state legislatures or state executives to request Federal troops.
>
> Under 18 USC 1383, the President has authority to declare any part or all of the United States military zones. People in such zones can be jailed for a year for violating any "executive order of the President." Would these arrests be reviewable in court? It is not clear. Judicial review of agency actions is guaranteed in 5 USC 702, but 5 USC 701 excludes actions taken under declarations of martial law.
>
> A President could make use of Public Law 733, which expresses the determination of the United States to prevent "by whatever means may be necessary including the use of arms," any "subversive" activities by the government of Cuba.
>
> Under 47 USC 308, the Federal Communications Commission could, during a national emergency, modify existing broadcast licenses under terms it might prescribe.
>
> Under 47 USC 606, the President can amend "as he sees fit" the rules and regulations of the Federal Communications Commission and, in particular, can "cause the closing of any facility or station for wire communications."
>
> If the President finds the nation "threatened by attack," he could, under 44 USC 1505, cease to publish his regulations in the Federal Register if he determines that it is "imprac-

ticable." This could open the way to promulgation of secret laws.

Moreover, no recent comprehensive record of statutes effective during times of emergency had been compiled. No consistent procedure was being followed in declaring, administering, and terminating states of national emergency. The enlarged task that the Committee confronted led to its being redesignated the Special Committee on National Emergencies and Delegated Emergency Powers.

Two Tasks for the Committee

The Special Committee worked on two main tasks. The first was to explore how existing states of national emergency could be terminated with the least adverse effects. There were three possible approaches: (a) outright repeal of all emergency statutes, (b) relegating all emergency provisions to a state of dormancy to be used in future emergencies, or (c) maintaining emergency provisions in the United States Code but for use only in states of emergency declared in accordance with regular and consistent procedures which would provide for termination and oversight.

The second task was to explore the possibility of establishing a procedure for declaring states of national emergency. The procedure would require accountability for actions taken by the Executive pursuant to delegated emergency authorities in order to permit the Congress to effectively exercise its oversight responsibilities.

Hearings

Concurrent with the historical research undertaken by the staff of the Special Committee, the Library of Congress and distinguished consultants, hearings were held on the history of emergency rule in the United States and constitutional problems created by such rule.

Professor Robert S. Rankin, Emeritus, of Duke University, Professor Cornelius P. Cotter of the University of Wisconsin, and Professor J. Malcolm Smith of California State University, all renowned scholars of the subject of emergency powers, testified in hearings held by the Special Committee on April 11, 1973.

Professor Adrian S. Fisher, Dean of the Georgetown University Law Center, and Dr. Gerhard Casper, Professor of Law and Political Science at the University of Chicago, testified on April 12, 1973. Professor Fisher served as an advisor to President Harry S. Truman in 1950 and described to the Committee the circumstances surrounding Truman's declaration of national emergency in that year. Professor Casper testified on the constitutional questions raised by Executive use of emergency powers.

The Committee also heard from officials formerly associated with the Justice Department and Supreme Court including the late Chief Justice Earl Warren. Former Attorney General of the United States and Associate Justice of the U.S. Supreme Court Tom C. Clark, former Attorney General Nicholas DeB. Katzenbach, and former Attorney General Ramsey Clark testified on July 24, 1973. Later, on November 28, 1973, former Attorney General Elliott Richardson and former Solicitor General Erwin Griswold presented their views to the Special Committee.

Throughout its work the Special Committee has had the benefit of the full cooperation and assistance of the Justice Department, under four successive Attorneys General—Kleindienst, Richardson, Saxbe, and Levi—as well as the Department of Defense and the Office of Management and Budget.

Publications on Emergency Powers

To improve understanding of emergency laws and procedures and provide the basis for legislation, the Special Committee published a number of studies, reports, and compilations. The first was a compilation of "Emergency Power Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency." The story of how this document was composed illustrates the size of the task the Committee faced and the cooperation it received from the Executive branch.

In the past, the only way to compile a catalog useful to Congress would have required going through every page of the 86 volumes of the Statutes-at-Large. Fortunately, the U.S. Code was put into computer tapes by the U.S. Air Force in the so-called LITE system, which is located at a military facility in the State of Colorado. The Special Committee devised several programs for computer searches based on a wide spectrum of key words and phrases contained in typical provisions of law which delegate extraordinary powers. Examples of some trigger words are "national emergency," "war," "national defense," "invasion," "insurrection," et cetera.

These programs resulted in several thousand citations. At this point, the Special Committee and Library of Congress staffs went through the printouts, separating out those provisions of the U.S. Code most relevant to war or national emergency, and weeding out those provisions of a trivial or extremely remote nature. Two separate teams worked on the computer printouts and the results were put together in a third basic list of U.S. Code citations.

To determine legislative intent, the U.S. Code citations were then hand checked against the Statutes-at-Large, the Reports of Standing Committees of the U.S. Senate and House of Representatives and, where applicable, Reports of Senate and House Conferences.

In addition, the laws passed since the publishing of the 1970 Code were checked and relevant citations were added to the master list. The compilation was then checked against existing official catalogs: that of the Department of Defense, "Digest of War and Emergency Legislation Affecting the Department of Defense"; that of the Office of Emergency Planning, "Guide to the Emergency Powers Conferred by Laws in Effect on January 1, 1969"; and, the 1962 House Judiciary Committee synopsis of emergency powers, "Provisions of Federal Law in Effect in Time of National Emergency." The result was a compilation and commentary on 470 special statutes invokable by the President during a time of declared national emergency.

Once the Special Committee had completed its compilation of emergency statutes, the staff, assisted by the Office of Management and Budget, solicited evaluation of the existing statutes from Executive departments, agencies, and offices and from Standing Committees of the Senate. "Executive Replies: Summaries of the Executive Branch and Committee Recommendations" was then issued as a committee print in three parts.

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Other Publications

The Special Committee also composed a study of "Executive Orders in Time of War and National Emergency." This compilation brought together as complete a collection as possible of Executive Orders and Proclamations issued pursuant to states of war and national emergency. The collection was based on an examination of Proclamations and Executive Orders found at the Library of Congress and the Federal Register. The report documents the lack of legal accountability in many important areas of public policy for orders given by the President.

In addition, "A Brief History of Emergency Powers in the United States" was issued as a commitee print. When the Special Committee began its work, there was no basic study outlining the use of emergency powers in the United States from the time of the Philadelphia Constitutional Convention to the present. To fill the gap, the Committee asked Dr. Harold Relyea of the Library of Congress to write a chronological history of the American government in times of crisis. His study highlights the great crises of American history and the manner in which the three branches of the Federal Government have met particular emergency situations. Especially significant are the experiences and legacies of Shay's Rebellion, the Civil War, labor strikes of the late 19th Century, and both World Wars.

COURT GUIDANCE

Throughout its work the Special Committee has paid close attention to court decisions. The Committee was particularly guided by the famous *Youngstown Steel and Tube Company* v. *Sawyer* decision, in which the Supreme Court failed to uphold an attempt by President Truman to seize control of the striking steel industry. Speaking for the majority, Justice Black held that "the President's power, if any, to issue the order must stem from an Act of Congress or from the Constitution itself." He characterized President Truman's action as an unconstitutional arrogation of "law-making power" by the Executive.

Justice Jackson's widely quoted and praised concurring opinion stressed that our system of government is a "balanced power structure" and pointed out that Executive power to act is a variable depending upon the collective will of Congress for its authority. Justice Jackson listed three situations which determine the extent of the President's power:

> 1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.
>
> 2. When the President acts in absence of either a Congressional grant or denial of authority, he can only rely upon his own independent powers.
>
> 3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.

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Justice Jackson continued:

> The appeal, however, that we declare the existence of inherent powers *ex necessitate* to meet an emergency asks us to do what many think would be wise, although it is something the forefathers omitted. They knew what emergencies were, knew the pressures they engenered for authoritative action, knew, too, how they afford a ready pretext for usurpation. We may also suspect that they suspected that emergency powers would tend to kindle emergencies. Aside from suspension of the privilege of the writ of habeas corpus in time of rebellion or invasion, when the public safety may require it, they made no express provision for exercise of extraordinary authority because of a crisis. I do not think we rightfully may so amend their work, and, if we could, I am not convinced it would be wise to do so, although many modern nations have forthrightly recognized that war and economic crisis may upset the normal balance between liberty and authority. Their experience with emergency powers may not be irrelevant to the argument here that we should say that the Executive, of his own volition, can invest himself with undefined emergency powers.

After recalling the experience of Germany, where the Constitution had permitted the President to suspend individual rights, and Great Britain and France, where the parliaments had maintained strict control over emergency powers, Justice Jackson concluded:

> This contemporary foreign experience may be inconclusive as to the wisdom of lodging emergency powers somewhere in a modern government. But it suggests that emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the "inherent powers" formula. Nothing in my experience convinces me that such risks are warranted by any real necessity, although such powers would, of course, be an Executive convenience.
>
> In the practical working of our Government we already have evolved a technique within the framework of the Constitution by which normal Executive powers may be considerably expanded to meet an emergency. Congress may and has granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in war or upon proclamation of a national emergency. In 1939, upon Congressional request, the Attorney General listed ninety-nine such separate statutory grants by Congress of emergency or wartime Executive powers. They were invoked from time to time as need appeared. Under this procedure we retain government by law—special, temporary law, perhaps, but law nonetheless. The public may know the extent and limitations of the powers that can be asserted, and persons affected may be informed from the statute of their rights and duties.

> In view of the case, expedition and safety with which Congress can grant and has granted large emergency powers, certainly ample to embrace this crisis, I am quite unimpressed with the argument that we should affirm possession of them without statute. Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction.

The Special Committee accepted Jackson's opinion as a basic guideline for its work. The continuing importance of the opinion is illustrated by the reference made to it in counsel given to the Special Committee by the late Chief Justice Earl Warren just prior to his death. Senator Mathias reported the details of that conversation to the Senate on August 22, 1974:

> Chief Justice Warren said that while the Constitution provides that only Congress can make the law, the legislature had the obligation through enacting statutes to provide firm policy guidelines for the Executive branch. The former Chief Justice agreed with Justice Jackson's view that where there are statutory guidelines, a President is obliged to follow the precepts contained in the laws passed by the Congress. Inherent powers problems arise and the other branches act, he said, largely when Congress fails to act definitely, when it fails to make needed laws and when there is a necessity for legislative action and Congress fails to meet the challenge.

Legislative History

Upon the basis of all its findings, the Special Committee decided to write legislation which would both effectively end the four states of national emergency found to be in force and establish procedures for the handling of any future national emergency. The resulting bill, the National Emergenceis Act, has received broad bipartisan support and elicited a rare degree of cooperation between the Executive and Legislative branches of government.

A quick review of the legislative history is instructive. The Committee first submitted the National Emergencies Act to the Senate on August 22, 1974. The bill, S. 3957, was sponsored by Senators Church, Mathias, Hart, Pell, Stevenson, Case, Pearson, Hansen, Ervin, Chiles, Williams, Muskie, Javits, Ribicoff, and Roth. The legislation provided for:

1. Termination of powers and authorities available to the Executive as a result of the states of national emergency in force.
2. Congressional review of future national emergencies.
3. Congressional oversight of and Executive accountability for actions taken in the exercise of emergency powers.
4. Repeal of obsolete emergency powers statutes.

The Senate Committee on Government Operations, to which the bill was referred, reported it without amendment on September 30, 1974 (S. Rept. 93–1193). On October 7 on the floor of the Senate, Senator Mathias offered amendments incorporating compromises agreed to by the Government Operations Committee and the Administration. The amendments provided for:

1. Extension of the termination date for existing emergencies from nine to twelve months from enactment;
2. A semi-annual review and decision by Congress on whether to end an emergency, rather than automatic termination of states of emergency;
3. Reduction of the number of statutes to be repealed;
4. Exemption of six statutes considered essential by the Executive branch and provision for their review by appropriate Congressional committees;
5. Requirements for an accounting of expenditures incurred in the exercise of national emergency statutes.

The amended legislation passed the Senate without dissent on October 7, 1974.

Senate bill, S. 3957, then went to the House of Representatives, but the House Judiciary Committee, to which the legislation was referred, was unable to act on the bill in 1974. Representative Peter Rodino, the Committee Chairman, had intended to hold early hearings on the legislation; however, the impeachment inquiry and confirmation of Vice President Rockefeller prevented consideration during the 93rd Congress, and the bill consequently died.

Early in the 94th Congress, on February 27, 1975, Chairman Rodino introduced H.R. 3884 and on March 6, 1975, Senator Mathias introduced S. 977. The bills were identical and, with the exception of two minor technical amendments, the same as the measure already passed by the Senate.

The House Judiciary Subcommittee on Administrative Law and Governmental Relations, chaired by Representative Walter Flowers, then held hearings on H.R. 3884 on March 6, 13, 19 and April 9, 1975. Witnesses included Senator Mathias, Senator Church, Representative Rodino, and representatives of Executive departments and agencies.

On May 21, 1975, the Judiciary Committee reported H.R. 3884 with amendments (H. Rept. 94–238). Most of the changes clarified and corrected sections of the bill. One amendment advanced from one year to two years the effective date for the termination of the existing emergency powers. The two-year delay provided time for all Executive agencies and departments dependent on emergency statutes to seek permanent legislation. Another revision gave the Executive additional time to account for expenditures incurred during the exercise of emergency powers. The Committee felt that the original schedule did not provide sufficient time for the reporting of expenditures. The Committee also increased the number of statutes which would be exempt from the force of the legislation.

H.R. 3884, as amended by the House Judiciary Committee, passed the House on September 4, 1975. On the floor, the House accepted an amendment by Representative Matsunaga to provide for automatic termination of an emergency if the Executive fails to publicly renew the emergency. Final passage came easily. Only five Representatives voted against the bill, while three hundred and eighty-eight cast their ballots in favor of it.

In the Senate, H.R. 3884 was referred to the Government Operations Committee. Senator Church and Senator Mathias testified on behalf of the legislation on February 25, 1976, but the full Committee has been unable to markup the bill yet, due to the press of other business, mainly proposed reforms concerning the Central Intelligence Agency.

The Special Committee believes that there is no reason to delay passage any longer. Both houses of Congress have passed the bill overwhelmingly; the only problem is that the Senate acted in the 93rd Congress and the House in the 94th. Seldom has such a significant piece of legislation received such universal support. The time for the National Emergencies Act to become the law of the land is long overdue.

WORK REMAINING

Passage of the National Emergencies Act is the top priority, but other issues will also deserve attention in the future.

Issues related to the National Emergencies Act

1. Committee review of exempted statutes—Under Title V of the National Emergencies Act certain statutes are exempted from the force of the legislation pending further review by Standing Committees in the House and Senate. The Special Committee initially contemplated no such exemptions, but it became apparent that because of the prolongation of emergency rule in the United States, many governmental departments had come to depend on these laws for their day-to-day operations. Abrupt termination of such provisions threatened to disrupt activities deemed to be essential to the functioning of the government. To avoid such disruption and to allow careful consideration of the statutes in question and enactment of permanent law where appropriate, the Committee agreed to exempt these provisions from the effect of the legislation.

Close scrutiny will be required to determine whether these statutes should be continued in force or how they should be amended. Serious questions exist about future reliance on laws which were enacted to meet emergency situations and which have been used in ways not envisioned in the legislative histories of the statutes.

2. Careful review of requests for permanent law—The National Emergencies Act provides for a two-year delay in the termination of emergency powers currently possessed by the President. The delay is designed to give Executive agencies time to seek permanent legislation where necessary. Congressional committees should remain vigilant during this period and conduct a rigorous examination in those instances where permanent law is sought in place of emergency law (i.e., law operative only under a condition of proclaimed national emergency). Care must be taken to preserve the distinction between permanent law and emergency law and to insure that powers which are properly restricted to periods of national emergency do not become available in normal times. Committees should examine Executive justifications closely and not allow changes solely for reasons of convenience.

3. Potential efforts to thwart intent of law—Congress must be wary of potential efforts to bypass or circumvent the intent of the new legislation. It should be clearly understood that Congress will not accept

any claim that an emergency is so severe that the President can act without the Congressional review required under this legislation. Congress must be prepared for possible efforts to thwart the intent of the bill by dropping the wording "national emergency" and introducing different terminology. Committees must insure that all emergency legislation, however denominated, has the same accountability and reporting requirements and termination procedures. No claim can in the future be advanced that a particular type or class of emergency can arise in which the President's powers are not subject to Congressional review.

Need for an Investigation of Emergency Preparedness Efforts Conducted by the Executive Branch

The Special Committee recommends that emergency preparedness efforts in the United States be investigated to determine the advantages and disadvantages of the administrative structure established in 1973.

Under Reorganization Plan Number 1 of 1973, the Office of Emergency Preparedness was dismantled and a more decentralized administrative apparatus set up. The Federal Preparedness Agency within General Services Administration assumed responsibility for coordination and planning; the Federal Disaster Assistance Administration within Housing and Urban Development became the central agency in charge of natural disasters; and the Department of the Treasury assimilated those functions regarding investigations of imports which might threaten national security.

The Committee believes that now—three years after that reorganization—the time has arrived to assess its effects and to evaluate the operation of the new structure with particular attention to emergency preparedness, coordination, planning, and civil liberties questions. A brief exploration by the staff of this Committee raised serious questions, and further investigation seems wise.[1]

Need for Congressional Preparations for an Emergency and Continual Review of Emergency Law

The Special Committee believes that Congress must take steps to insure that it will be able to act quickly and effectively in time of emergency. Action must be taken now if Congress is to play an active, responsible role in any future emergency.

In a letter to Senators Church and Mathias on May 14, 1974. Majority Leader Mansfield described emergency preparations undertaken by the leadership:

> Under the terms of the resolution. adopted December 22, 1973, the Majority Leaders of each House, or the Minority Leaders of each House. or the Speaker and President Pro Tempore have the authority to call the Congress back into session within 48 hours. It is my intention to insist upon this provision for any recess or adjournment of the Senate of a duration in excess of three days.
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> Although a more efficient system could be established, the leadership of the Senate does have the capacity now to contact

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[1] See "Staff Report on Emergency Preparedness" in the Appendix.

> each Senator within 24 hours. I believe that an enactment might be necessary to assure the proper priority by the various Executive departments of requests for air transportation when the above procedure is invoked.

The Committee believes that more thought should be given to emergency preparedness. Congress must anticipate diverse scenarios and insure its ability both to survive a crisis and to act effectively in its aftermath. There must be an intelligent definition of the role Congress should assume in emergency preparedness efforts and other emergency activities.

It may be wise to appoint personnel or to establish an administrative mechanism to assume responsibility for coordinating emergency preparations. A new subcommittee, which need not be large, could be set up in the Government Operations Committee, the Joint Committee on Congressional Operations, or elsewhere. The subcommittee could, on an ongoing basis, review Congressional activities, oversee Executive efforts, and coordinate the work of the two branches of government. It could also work out administrative details of the National Emergencies Act and insure that its provisions are followed in time of emergency.

If the Senate were reluctant to set up a permanent body to monitor policy developments, it could establish, on a reserve basis, a panel which would come into existence as soon as a national emergency has been proclaimed. The unit might be a Special or Select Committee, or a subcommittee of the Government Operations Committee. The panel would provide a coordinating center to bring concentrated attention to the emergency.

Regardless of whether any new Congressional structures are established, regular examination of the canon of emergency statutes, Executive orders and related administrative rules, regulations and instruments—operative, dormant, limited—is imperative to keep the Congress apprised of developments and advised as to corrective actions which should be undertaken. The potential threat posed by national emergency law to the political well-being of a democracy makes essential regular examination of policy developments by a Senate committee. Since the Government Operations Committee has had responsibility for the National Emergencies Act in the Senate, it seems appropriate that this Committee conduct this review.

Ending Open-Ended Grants of Authority to the Executive

The Special Committee is particularly concerned that Congress end its dangerous practice of extending open-ended authority to the President. Future legislation should include a terminal date for authorities granted to the Executive and provide for Congressional review.

Past experience presents ample reason for concern about the lack of controls on powers extended to the President. Too often the failure to include a terminal date or to require Congressional review has led to a situation in which the use of an Act belies the purposes for which it was enacted. Several examples illustrate this pattern.

During the Civil War, Congress passed the Feed and Forage Act of 1861 to enable the cavalry in the American West to buy feed for their horses when Congress was out of session. Later, Presidents invoked the authority of this Act to spend millions of dollars without benefit of Congressional action. The law was used to finance American marines in Lebanon in 1958, to support the Berlin mobilization in 1962, and to maintain troops in Southeast Asia.

In 1933, Congress passed the Emergency Banking Act, which was based on Section 5(b) of the Trading with the Enemy Act of 1917. The legislation gave President Roosevelt the power to control major aspects of the economy—an authority which had formerly been reserved to the Congress. Since then, the Executive branch has used this authority constantly to regulate many aspects of foreign trade and international monetary controls. For instance, when President Johnson wanted to control the foreign investments of U.S. companies in 1968 to alleviate the balance of payments crisis, he issued an Executive Order based on this authority.[2]

In 1950, Congress passed the Defense Production Act giving the President wide-ranging powers to control the production of materials needed for national defense efforts connected with the Korean War. Sixteen years later, the Act was used to fill a Department of Defense order for 3 million tropical uniforms for use in Vietnam. In the fourth quarter of 1966, the President also relied on the law to require steel, copper, and aluminum producers to set aside part of their output for defense purposes.

Most troubling about these open-ended grants of power is that they have often been made in response to the exigencies of war and other emergency conditions, frequently with the most perfunctory committee review and with virtually no consideration of a law's effect on civil liberties or the delicate structure of divided powers in the U.S. government. The passage of broad economic measures in 1933 provides an extreme example. There was a total of only eight hours of debate in both Houses. There were no committee reports; indeed, only one copy of the bill was available on the floor. The same pattern of hasty and inadequate consideration was repeated during World War II, the Korean War, and the 1964 debate on the Tonkin Gulf resolution.

Lack of Congressional control is particularly characteristic of emergency statutes, most of which have no provision for Congressional oversight or termination. There are two reasons for this. First, few, if any, foresaw that the temporary states of emergency declared in 1933, 1939, 1941, 1950, 1970, and 1971 would remain in effect for so long (the 1939 and 1941 emergencies were terminated in 1952). Second, the various administrations which drafted these laws were understandably not concerned about providing for Congressional review, oversight, or termination of delegated powers, which gave the President wide-ranging authority.

In any case, the time has come to reverse the pernicious habits of the past. It is imperative that termination dates, reporting requirements, and accountability procedures be included in future legislation. Those who would argue for greater latitude for the Executive should remember the experience of the British who fought all through the Second World War on delegation of power extended to the Prime Minister for no longer than thirty days at a time.

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[2] The Special Committee wishes to commend the House International Relations Subcommittee on International Trade and Commerce, which started an investigation of Section 5(b) of the Trading With the Enemy Act in the fall of 1975.

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Investigating and Instituting Stricter Controls Over Delegated Powers

Concurrent with efforts to include terminal dates and provision for Congressional review in future legislation, there must be a reexamination of the whole isue of Congressional delegations of power to the Executive.

Fortunately, the Senate Judiciary Subcommittee on Separation of Powers has already initiated an investigation in this area. That subcommittee is examining the question of whether the delegation doctrine retains any vitality. The study will focus on the pattern of abdication of responsibility by the Congress through the use of broad unstructured mandates and the excessive use by the Executive of guidelines and Executive orders either to implement policies not concurred in by Congress or to aggrandize narrowly delegated power.

The Special Committee wishes to emphasize the importance of this inquiry. The Committee's examination of delegated emergency powers revealed the extent of power the Legislative branch has delegated to the Executive. Emergency powers statutes embrace every aspect of Amrican life, and it only takes a quick glance at certain statutes to underscore the vast transfer of power to the Executive. For instance, Section 712 of Title 10 of the United States Code, entitled "Foreign Governments: Detail to Assist," reads:

> (a) Upon the application of a country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters—
>
> (1) any republic in North America, Central America, or South America;
>
> (2) the Republic of Cuba, Haiti, or Santo Domingo; and
>
> (3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.
>
> (b) Subject to the prior approval of the Secretary of the military department concerned, a member detailed under this section may accept any office from the country to which he is detailed. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States. Arrangements may be made by the President, with countries to which such members are detailed to perform functions under this section, for reimbursement to the United States or other sharing of the cost of performing such functions.

The Defense Department, in answer to inquiries by the Special Committee concerning this provision, has stated that it has only been used with regard to Latin America, Liberia and Iran, and interprets its applicability as being limited to noncombatant advisers. The language of Section 712, however, is wide open to other interpretations.

The transfer of power of which this statute is illustrative is the result of Congressional mandate, not Executive usurpation. Over the past four decades the Congress has been content to give the Executive increasing latitude to act without reference to Congress. In a Yale Review article, entitled "The Routinization of Crisis Government," Donald L. Robinson underscores the trend:

> A review of the development of [emergency] statutes reveals the deterioration of legislative form during the twenti-

> eth century. They vary most significantly in the guidelines they lay down for administrators, and it is here that a trend is most apparent. Some, like the statute giving the President power to call the National Guard into Federal service, have always been couched in language giving the President broad discretion . . . statutes dealing with the military have always tended to be broad in their delegations to the President.
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> When emergency powers touch upon domestic industry, however, Congress has traditionally tended to show greater care in the delegation of powers to the Executive branch. In 1916, for example, Congress passed an act providing for the mobilization of industries capable of producing war material. If such industries refused to comply with government orders "in time of war or when war is imminent," the President was authorized to take possession and, through an appointed Board of Mobilization, to operate them. Firms were to be given "fair and just" compensation for their products or for the "rental" of their facilities. Despite pressure from the Truman Administration, Congress steadfastly refused to broaden the act by authorizing seizures in peacetime emergencies or even in the event of undeclared wars like the Korean. But, in 1956, this statute was repealed, and replaced by one much briefer, stripped of all qualifications as to the kind of enterprise subject to seizure and the kinds of compliance that would forestall seizure. Under present law, when the President deems war imminent, he "may take possession of any plant" which refuses to "manufacture the kind, quantity, or quality of arms or ammunition . . . ordered by the Secretary [of the Army]; or . . . to furnish them at a reasonable price as determined by the Secretary."
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> In the case of labor regulations, an even more marked trend toward legislative permissiveness is apparent. In 1917, Congress passed an act providing for the suspension of the eight-hour day on contract work for the government during declared emergencies. In 1962, the chapter dealing with "hours of labor on public works" was completely revised. No longer do the powers of the Secretary of Labor to suspend the provisions of the law depend upon the existence of a declared emergency. Instead, he is given discretion to permit variations and exemptions "to and from any or all provisions" of the act, if he finds it "necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business." The report of the Senate Committee on Labor and Public Welfare, which urged the passage of this revised "work standards" legislation, fails even to mention the change cited here.

The Special Committee believes that it is time to reverse this trend. In the future, when Congress delegates power to the Executive, it should be more specific in defining the conditions in which the authority may be used. Beyond that, the challenge is to devise means by which Congress can monitor the exercise of delegated powers and control those actions deemed to be unnecessary or undesirable. Serious consideration should be given to legislation which would give Congress some type of veto over Executive branch rules and regulations judged to be inconsistent with the legislative intent of the authorizing statute. The law might also cover Executive directives, rules, and regulations which only come into effect during a condition of national emergency. These instruments, though effective only at some future time, should be subject to Congressional scrutiny prior to issuance or activation so that, when they are needed, they will truly reflect the intent of the Legislative branch and will not require adjustment in the midst of a crisis.

Improving the Accountability of Executive Decisionmaking

There must also be an effort to increase Executive accountability by regularizing the procedures surrounding the issuance of Executive orders.

The Special Committee's examination of "Executive Orders in Times of War and National Emergency" underscored the chaotic and secretive conditions that envelop Executive decisionmaking. The Committee found considerable confusion in procedure, a decided absence of a comprehensive means for public accountability, and an uncertain basis for the determination of legal authority on which Executive directives may be issued or challenged.

Title 3 of the Code of Federal Regulations indicates that in issuing decisions and commands, Presidents have used such diverse forms as letters, memorandums, directives, notice, reorganization plans, administrative designation, and military orders. The decision whether to publish an Executive decision is clearly a result of the President's own discretion rather than any prescription of law. In recent years, the National Security Action Memorandums of Presidents Kennedy and Johnson and the National Security Action Directives of President Nixon represent a new method for promulgating decisions, in areas of the gravest importance. Such decisions are not specifically required by law to be published in any register, even in a classified form; none have prescribed formats or procedures; none of these vital Executive decisions are revealed to Congress or the public except under irregular arbitrary or accidental circumstances. For instance, the 1969–1970 secret bombing of Cambodia has recently come before Congressional and public notice. The public record reveals very little about how the commands for such far reaching actions were issued. What is most disturbing is lack of access to any authoritative records in these matters. In short, there is no formal accountability for the most crucial Executive decisions affecting the lives of citizens and the freedom of individuals and institutions.

The problem is exacerbated by the classification of sensitive or important Executive decisions, classification which in most cases prevents even Congress from having access to these documents. While no one would wish to prevent sensitive documents from being classified for reasonable cause, the absolute discretion given to the Executive in this area has led to abuse. It has permitted and encouraged inclusion in this category of many documents in no way connected with essential national security. Moreover, not only are their contents kept secret, but even the extent of such documents is unascertainable. On the basis of the handling of past Presidential papers, many of these documents will, of course, in one manner or another, eventually be declassified, but many have been withheld by Executive discretion.

The legal record of Executive decisionmaking has thus continued to be closed from the light of public or Congressional scrutiny through the use of classified procedures which withhold necessary documents from Congress, by failure to establish substantive criteria for publication and by bypassing existing standards. As a result, the legality of a substantial area of operations of the Government has in large measure been immune from any oversight or scrutiny by Congress. And the situation is growing worse. The number of formal Executive Orders and Proclamations has, in recent years, declined from many hundreds to about 70 annually. Since it is certain that as the United States has grown in size and power the Executive has issued more and more decisions, many of which are of the greatest importance, it can only be surmised that such commands continue to be issued in irregular form and in ways hidden from Congress and the people. As the role of the Executive in Government continues to expand, this must be cause for concern.

Again, the complacency of the Congress can be cited as the reason for this disorderly state of affairs. Congress has not specified substantive standards for the recording of Presidential directives. In addition, Congress has not yet enacted laws to prevent the Executive branch from abusing its power to classify documents where its purpose is to withhold information from Congress and the public.

Improving the accountability of Executive decisionmaking must be a matter of the highest priority. One task—that of codification—has already been begun by the Federal Register. That organization has embarked upon a codification of all published Executive orders issued between 1961 and 1975. This codification, which is expected to be finished by the summer of 1976, will represent the first definitive compilation of published Executive directives. In the past the exact legal status of Executive orders has been virtually impossible to ascertain. While many Executive orders have specified which orders they were modifying or superseding, this practice has by no means been uniform.

The next step would seem to be amendment of the Federal Register Act of 1935, which provides the present statutory guidelines for the issuance of Executive decisions and orders. That Act is supplemented by a series of Executive orders by which the Executive prescribes for itself additional procedures to be observed. Both the statutory and the self-imposed regulations, however, fail to diminish significantly the fundamental arbitrariness of the system, and the Executive's own procedures appear to be followed only insofar as it is convenient to the Executive's purpose at the time.

The Federal Register Act (44 U.S.C. 1505) provides for the publication of:

> 1. Presidential Proclamations and Executive Orders, except those not having general applicability and legal effect or effective only against Federal Agencies or persons in their capacity as officers, agents or employees thereof;
>
> 2. Documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and
>
> 3. Documents or classes of documents that may be required so to be published by Act of Congress.

The categories enumerated herein are not all-inclusive. First of all, there is the problem of terminology. If a document is not specifically designated as an "Executive Order" or "Presidential Proclamation," the decision of whether or not it will be published as a part of the public record is left to the discretion of the President and his advisers. If he wishes a document to have "general applicability an legal effect," he will presumably have it published. If, however, the order is directed only to an official or an agency and does not purport to regulate the conduct of private citizens, there is no legal necessity for its publication. Most Executive directives fall into this category. Although most Executive directives pertain to exclusively internal bureaucratic operations, many others have great consequences for the Government, the Nation, and individuals as well. One need cite only the decisionmaking which governed the war in Indochina to illustrate the point most vividly. Although clause 3 of 44 U.S.C. 1505 permits Congress to designate classes of documents for publication, Congress has never addressed itself directly to this question in the broad sense here considered.

Amendment could be made to insure the publication of all significant Executive directives, however denominated, in the Federal Register. At the same time some thought should be given to establishing a system whereby classified rules and orders, by whatever name called, would be registered.

Until Congress grapples with these problems directly, it will be confronted with a continuing veil of secrecy and will be unable to conduct effective oversight of the Executive branch.

CONCLUSION

While much work remains, none of it is more important than passage of the National Emergencies Act. Right now, hundreds of emergency statutes confer enough authority on the President to rule the country without reference to normal constitutional process. Revelations of how power has been abused by high government officials must give rise to concern about the potential exercise, unchecked by the Congress or the American people, of this extraordinary power. The National Emergencies Act would end this threat and insure that the powers now in the hands of the Executive will be utilized only in time of genuine emergency and then only under safeguards providing for Congressional review.

The Special Committee believes that it has provided the nation with an effective, workable method for dealing with future emergencies in accord with constitutional processes. The legislation establishes statutory guidelines for the declaration, administration, and termination of national emergencies. At the minimum, it provides procedure and due process for the exercise of emergency authority.

The bill rests on the Committee's conviction that both the Executive and Legislative branches have vital roles to play. The Constitution makes no provision for suspending the distribution of power in the United States Government in time of emergency. And it would be wrong to argue that the framers did not anticipate crises. As Justice Jackson observed, "they knew what emergencies were, knew the pressures they engender for authoritative action, knew, too, how they afford a ready pretext for usurpation." Constitutional scholar Gerhard Casper has commented:

> the refusal to arrange for institutional changes during emergencies expresses the confidence of the Founding Fathers that the ordinary institutions were so designed as to be capable of coping with extraordinary events.[3]

The Committee, consequently, cannot accept any doctrine which holds that a nation *in extremis* must submit to the will of a single individual. Such is the doctrine which has carried India to its present state, where the writ of habeas corpus is no longer recognized. Our forefathers—George Washington, James Madison, and others—cautioned, repeatedly, that one branch of government must not be allowed to usurp the powers of another. Thomas Jefferson knew that "the way to have a good and safe government, is not to trust it all to one, but to divide it among the many." In answer to his own question, "What has destroyed liberty and rights of man in every government which has ever existed under the sun?" he replied, "the generalizing and concentrating of all cares and powers into one body."[4] No doubt we can envision circumstances where greater authority must be lodged in the Executive, but the Executive cannot be allowed to arrogate those powers to itself without recourse to the Legislative branch.

The Special Committee can only conclude by reemphasizing that emergency laws and procedures in the United States have been neglected for too long, and that Congress must pass the National Emergencies Act to end a potentially dangerous situation. To fail to act is to invite abuse. Surely now, after the Vietnam War, the bombing of Cambodia, the Watergate abuses, and the violation of the rights of Americans by the intelligence agencies, Congress is too wise to do that.

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[3] Gerhard Casper, Statement, U.S. Congress, Senate, Special Committee on the Termination of the National Emergency, "Constitutional Questions Concerning Emergency Powers, Hearings," April 12, 1973, 93rd Congress, 1st session, p. 77.

[4] Thomas Jefferson letter to Joseph C. Cabell, 1816.

APPENDIXES

Publications of Special Committee on National Emergencies and Delegated Emergency Powers

REPORTS

A Brief History of Emergency Powers in the United States: U.S. Senate, Committee Print, 93d Congress, 2d Session, July, 1974. U.S. Government Printing Office, Washington, D.C. 140 pp.

Emergency Powers Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency: U.S. Senate, Senate Report 93–549, 93d Congress, 1st Session, November 19, 1973. U.S. Government Printing Office, Washington, D.C. 607 pp.

Summary of Emergency Power Statutes: U.S. Senate, Committee Print, 93d Congress, 2d Session, October, 1973. U.S. Government Printing Office, Washington, D.C. 74 pp.

Executive Orders in Times of War and National Emergency: U.S. Senate, Senate Report 93–1280, 93d Congress, 2d Session, October 16, 1974. U.S. Government Printing Office, Washington, D.C. 283 pp.

Summary of Executive Orders in Times of War and National Emergency: U.S. Senate, Committee Print, 93d Congress, 2d Session, August, 1974. U.S. Government Printing Office, Washington, D.C. 69 pp.

EXECUTIVE REPLIES

Part 1—Evaluation of Emergency Powers Statutes. U.S. Senate, Committee Print, 93d Congress, 2d Session. November, 1974. U.S. Government Printing Office, Washington, D.C. 126 pp.

Part 2—Summaries of the Executive Branch and Committee Recommendations. U.S. Senate, Committee Print, 93d Congress, 2d Session, November, 1974. U.S. Government Printing Office, Washington, D.C. 322 pp.

Part 3—Statutes at Large. U.S. Senate, Committee Print, 93d Congress, 2d Session, November, 1974. U.S. Government Printing Office, Washington, D.C. 68 pp.

HEARINGS

Part 1—Constitutional Questions Concerning Emergency Powers. U.S. Senate, 93d Congress, 1st Session, April 11, 12, 1973. U.S. Government Printing Office, Washington, D.C. 496 pp.

Part 2—Views of Former Attorneys General. U.S. Senate, 93d Congress, 2d Session, July 24, 1973. U.S. Government Printing Office, Washington, D.C. 225 pp.

Part 3—Constitutional Questions Concerning Emergency Powers. U.S. Senate, 93d Congress, 1st Session, November 28, 1973. U.S. Government Printing Office, Washington, D.C. 196 pp.

Errata Section

The Special Committee would like to note that there is an error in the information on page 96 of Senate Report Number 93–1280, "Executive Orders in Times of War and National Emergency." The original notation reads that ". . . Executive Order 11798 . . . revoked both Executive Order 11796 and Executive Order 11533." According to Presidential Documents Division, Office of the Federal Register, Executive Order 11798 revoked Executive Order 11796, but continued in "full force and effect" Executive Order 11533. The full text of Executive Order 11798 reads as follows:

REVOKING EXECUTIVE ORDER NO. 11796 OF JULY 30, 1974, AND CONTINUING IN EFFECT EXECUTIVE ORDER NO. 11533 OF JUNE 4, 1970, RELATING TO THE ADMINISTRATION OF EXPORT CONTROLS

By virtue of the authority vested in the President by the Constitution and statutes of the United States, including the statutes referred to herein, it is hereby ordered:

Section 1. Executive Order No. 11796 of July 30, 1974, issued under the authority of the act of October 6, 1917, as amended (12 U.S.C. 95a), is hereby revoked, except that this revocation shall not affect any violation of any rules, regulations, orders, licenses, and other froms of administrative action under said orders which occurred during the period said order was in effect.

Section 2. Pursuant to Public Law 93–372 of August 14, 1974, effective as of the close of July 30, 1974, Executive Order No. 11533 of June 4, 1970, and all delegations, redelegations, rules, regulations, orders, licenses, and other forms of administrative action under said order which were in effect on July 30, 1974, and which have not been revoked administratively or legislatively, are continued and shall be in full force and effect until amended, modified, or terminated by proper authority.

GERALD R. FORD.

THE WHITE HOUSE, *August 14, 1974.*

U. S. SENATE,
SPECIAL COMMITTEE ON NATIONAL EMERGENCIES
AND DELEGATED EMERGENCY POWERS,
Washington, D.C., April 23, 1976.

Hon. ABRAHAM RIBICOFF,
Chairman, Government Operations Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: The Special Committee on National Emergencies and Delegated Emergency Powers has prepared a Sourcebook on the National Emergencies Act. The document constitutes a legislative history of the Act, bringing together into one volume texts of bills, reports, Senate and House debate, and other pertinent documents. The volume also contains a bibliography of readings on emergency powers and a short introductory essay describing the evolution of the legislation. The Special Committee believes that the document will prove enormously useful to scholars and researchers and could be extremely important should a dispute over legislative intent ever arise in time of emergency.

Since the Special Committee is scheduled to terminate on April 30, 1976, we would like to request that the Government Operations Committee assume responsibility for completion of the Sourcebook. The only tasks that remain are: (1) to update the introductory essay on the legislative history of the bill; (2) to insert final documents, such as the Government Operations report, Senate debate, and the President's messages on the legislation; and (3) to issue the document for final printing. (All the other documents have been printed, proofread and are ready for final printing.)

Should you have further questions concerning the document and the work required to finish it, please contact Wilkie Sawyer or Gayle Fitzpatrick at 4–1281.

We would be most grateful for your assistance.

Sincerely,

Charles McC. Mathias, Jr.
Frank Church.

STAFF REPORT ON EMERGENCY PREPAREDNESS IN THE UNITED STATES

Senate Special Committee on National Emergencies and Delegated Emergency Powers

March 1976

Emergency Preparedness in the United States

In its investigations the Special Committee on National Emergencies and Delegated Emergency Powers has concentrated on determining the extent of emergency power delegated to the President and recommending procedures for the declaration, administration, and termination of emergencies. It has not attempted to evaluate the state of emergency preparedness in the United States. Only in its final days did the Committee probe this question at all, and then only briefly.

The range and complexity of emergency issues make any evaluation extremely difficult.[1] Too often government units, trapped within their particular fragment of the bureaucratic puzzle, fail to examine issues in all their parameters. In its brief probing of emergency preparedness issues, the staff of the Committee attempted to cut across customary lines of fragmentation and to take a broad view. To do this, the staff solicited the views of representatives of Federal emergency agencies, Congressional staff members, and nongovernmental experts.

The exploration raised serious questions, and the staff believes that it is time to assess the effects of the 1973 administrative reorganization and to evaluate the operation of the new structure with particular attention to emergency preparedness, coordination, planning, and civil liberties questions.

To facilitate such a study and to stimulate interest in and awareness of the many issues involved, this report will summarize the findings of the staff's brief survey.[1a]

Background

Until 1973 responsibility for emergency coordination was vested in the Office of Emergency Preparedness (OEP), located in the Executive Office of the President. OEP drew its authority from many sources, some by delegation from the President and others directly by statute. Its resource planning and mobilization functions were founded in part on the National Security Act of 1947,[2] the Defense Production Act of 1950,[3] and the Strategic and Critical Materials Stockpiling Act.[4] In the Eisenhower administration, civil and defense mobilization functions were merged when Reorganization Plan No. 1 of 1958 joined the functions of the Federal Civil Defense Administration and the Office of Defense Mobilization in a new component of the Executive Office of the President called the Office of Defense and Civilian Mobilization.[5] The plan provided for a Director and Deputy Director, three Assistant Directors, and ten Regional Directors; made the Director a member of the National Security Council; and attached to the new entity the Civil Defense Advisory Council, originally created by the Federal Civil Defense Act of 1950.[6] By successive statutes, the Office was renamed Office of Civil and Defense Mobilization,[7] Office of Emergency Planning,[8] and, finally, Office of Emergency Preparedness.[9]

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[1] To evaluate planning and preparedness efforts in a comprehensive manner, it is useful to develop analytical frameworks which will help structure an overview. Two frameworks may be useful to later investigators. One method involves classifying the specific types of emergency that could occur:

Economic: Depression, inflation, strikes, housing, agricultural, commodity trading, municipal or corporate bankruptcies, domestic program failures, etc.

Natural Catastrophe: Drought, agricultural pests, plagues, climatic changes, famine, floods, earthquakes, etc.

National Security: Defense, civil defense, internal security, hostilities, war, terrorism, embargoes, nuclear threats (peacetime and wartime), etc.

Another method would be to assess: (1) Organizational capabilities, (2) material resources, and (3) manpower availability.

[1a] This report represents an initial probing of preparedness issues, rather than a final statement on them. The staff was not able to conduct a thorough examination, and its findings must be viewed with caution.

[2] 61 Stat. 495, 499; 50 U.S.C. 404.

[3] 60 Stat. 596; 50 U.S.C. app., sec. 2061 et seq.

[4] 64 Stat. 798; 50 U.S.C. 98 et seq. See also 50 U.S.C. app., sec. 2271 note and Executive Order 11051 set out therein.

Through the years, OEP lost some functions and gained others. By Executive Order 10952, dated July 20, 1961,[10] President Kennedy withdrew designated civil defense functions from OEP and assigned them to the Department of Defense, where they still remain. OEP's responsibility for telecommunications policy was withdrawn (and an Assistant Director eliminated) when the Office of Telecommunications Policy was established by Reorganization Plan No. 1 of 1970.[11] Important new responsibilities for supervising disaster relief were thrust upon OEP by the Disaster Relief Act of 1970.[12] The OEP Director was authorized to form emergency support teams of Federal personnel; to draw upon outside organizations; to establish regional offices; to determine qualifications for assistance; to guide the activities of emergency personnel; to provide temporary housing, transportation, communications, and other facilities in emergencies; and to take other actions in major disaster areas. Other laws added to OEP's responsibilities in disaster relief, such as those which authorize Federal assistance to educational institutions which have suffered damage or destruction.[13]

By law or delegation of Presidential authority, OEP also served in various other capacities. Under section 232 of the Trade Expansion Act of 1962, for example, the OEP Director was responsible for investigating imports which might threaten to impair the national security.[14] He served by Presidential appointment as Chairman of the Oil Policy Committee, established by President Nixon in February, 1970, following the report of a Cabinet task force on oil import policy.[15]

On January 26, 1973, President Nixon submitted to the Congress Reorganziation Plan Number 1 of 1973. That plan called for the abolition of the Office of Emergency Preparedness, the Office of Science and Technology and the National Aeronautics and Space Council and the transfer of their functions to old line agencies. Nixon described the changes in the emergency preparedness area in the following words:

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[5] 72 Stat. 1799; 5 U.S.C., app. 565. Also printed at 50 U.S.C., app., sec. 2271 note.
[6] 64 Stat. 1245, 1247; 50 U.S.C. app., secs 2251–2297.
[7] 72 Stat. 861; see 50 U.S.C. app., sec. 2271 note.
[8] 75 Stat. 630; see 50 U.S.C. app., sec. 2271 note.
[9] 82 Stat. 1194; see 50 U.S.C. app., sec. 2271 note.
[10] 3 CFR, 1959–1963 Comp., p. 479.
[11] 5 U.S.C., app., p. 605.
[12] 42 U.S.C. sec. 4401 et seq.
[13] 81 Stat. 810. 86 Stat. 299.
[14] 19 U.S.C. 862(b).
[15] The information on pages 3–5 was excerpted from: U.S. Congress. House. Committee on Government Operations. Reorganization Plan No. 1 of 1973: House Report No. 93–106, 93rd Congress, 1st Session. Washington, U.S. Government Printing Office, 1973, pp. 12–13.

> In the interest of efficiency and economy, we can now further streamline the Executive Office of the President by formally relocating those responsibilities and closing the Office of Emergency Preparedness.
>
> I propose to accomplish this reform in two steps. First, reorganization plan No. 1 would transfer to the President all functions previously vested by law in the office or its director, except the director's role as a member of the National Security Council, which would be abolished; and it would abolish the Office of Emergency Preparedness.
>
> The functions to be transferred to the President from OEP largely incidental to emergency authorities already vested in him. They include functions under the Disaster Relief Act of 1970; the function of determining whether a major disaster has occurred within the meaning of (1) Section 7 of the Act of September 30, 1950, as amended, 30 U.S.C. 241–1, or (2) Section 762 (a) of the Higher Education Act of 1965, as added by Section 161 (a) of the Education Amendments of 1972, Public Law 92–318, 86 Stat. 288, 299 (relating to the furnishing by the Commissioner of Education of disaster relief assistance for educational purposes); and functions under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), with respect to the conduct of investigations to determine the effects on national security of the importation of certain articles.
>
> The Civil Defense Advisory Council within OEP would also be abloished by this plan, as changes in domestic and international conditions since its establishment in 1950 have now obviated the need for a standing council of this type. Should advice of the kind the council has provided be required again in the future, state and local officials and experts in the field can be consulted on an ad hoc basis.
>
> Second, as soon as the plan became effective, I would delegate OEP's former functions as follows:
>
>> All OEP responsibilities having to do with preparedness for and relief of civil emergencies and disasters would be transferred to the Department of Housing and Urban Development. This would provide greater field capabilities for coordination of federal disaster assistance with that provided by states and local communities, and would be in keeping with the objective of creating a broad, new Department of Community Development.
>>
>> OEP's responsibilities for measures to ensure the continuity of civil government operations in the event of major military attack would be reassigned to the General Services Administration, as would responsibility for resource mobilization including the management of national security stockpiles, with policy guidance in both

> cases to be provided by the National Security Council, and with economic considerations relating to changes in stockpile levels to be coordinated by the Council on Economic Policy.
>
> Investigations of importa which might threaten the national security—assigned to OEP by Section 232 of the Trade Expansion Act of 1962—would be reassigned to the Treasury Department, whose other trade studies give it a ready-made capability in this field; the National Security Council would maintain its supervisory role over strategic imports.
>
> Those disaster relief authorities which have been reserved to the President in the past, such as the authority to declare major disasters, will continue to be exercised by him under rapid interagency coordination, the federal response will be coordinated by the Executive Office of the President in charge of executive management.
>
> The Oil Policy Committee will continue to function as in the past, unaffected by this reorganization, except that I will designate the Deputy Secretary of the Treasury as chairman in place of the Director of OEP. The Committee will operate under the general supervision of the Assistant to the President in charge of economic affairs.
>
> The functions which would be abolished by this plan, and the statutory authorities for each, are:
>
> (1) The functions of the Director of the Office of Emergency Preparedness with respect to being a member of the National Security Council (Sec. 101, National Security Act of 1947, as amended, 50 U.S.C. 402; and Sec. 4, Reorganization Plan No. 1 of 1958);
>
> (2) The functions of the Civil Defense Advisory Council (Sec. 102(a) Federal Civil Defense Act of 1950; 50 U.S.C. App. 2272 (a))....[16]

Under the Reorganization Act of 1949, Executive reorganization proposals take effect automatically unless either House of Congress disapproves the plan within sixty days of its submission to Congress. Both the House and Senate Government Operations Committee held hearings on Reorganization Plan No. 1 of 1973. The Senate took no action, while the House issued a report approving the plan. The House group observed that "the President cannot be compelled to utilize a policymaking and advisory apparatus in the Executive Office against his own preferences." The House report concluded:

> We cannot predict how well the agencies will execute the functions and responsibilities transferred to them by the reorganization plan. The quality of leadership, the funds and resources available, management techniques, and other factors will make a large difference. The fear expressed by some critics of the plan is that the transferred functions will be buried at lower levels in departmental or agency bureaucra-

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[16] U.S., President, Message, "Reorganization Plan No. 1, 1973," Hearings, before a Subcommittee of the Committee on Government Operations, House of Representatives, 93rd Congress, 1st Session. Washington, U.S. Government Printing Office, 1973, pp. 100–102.

> cies, and that performance will suffer accordingly. This result is possible, but it will not follow automatically if common sense, good management, and sufficient resources are brought to bear.[17]

Neither house having disapproved, the reorganization plan went into effect. OEP was dismantled, and its authorities were split up between different Executive agencies. The Federal Preparedness Agency within GSA—known during a transitional period as the Office of Preparedness—assumed responsibility for coordination and planning. The Federal Disaster Assistance Administration within HUD became the central agency in charge of natural disasters. The Department of the Treasury assimilated those OEP functions regarding investigation of imports which might threaten national security. The Deputy Security of the Treasury replaced the OEP director as Chairman of the Oil Policy Committee, and FPA lost the seat which OEP had had on the National Security Council. The Civil Defense Advisory Council within OEP was abolished, while the Defense Civil Preparedness Agency, set up in 1972, continued as before.

Two investigations explored emergency preparedness issues in the two years following the reorganization. Hearings conducted in 1973 by the Subcommittee on Disaster Relief of the Senate Public Works Committee focused on the adequacy and effectiveness of federal disaster relief legislation. In 1974, hearings held by a House Appropriations Subcommittee indicated the need for a more complete investigation. There was confusion about the exact relationship of the DCPA and the Office of Preparedness (known as the FPA now). Georgiana Sheldon, Deputy Director of the DCPA, decried the lack of Congressional oversight.

Recently more studies have been launched. In January 1976, the House Armed Services Subcommittee on Investigations set up a panel to examine the nation's civil defense. The inquiry is particularly important since the Senate Armed Services Preparedness Investigating Subcommittee has not held any hearings in the last year and a half.

In December 1975, GAO initiated its own examination of the Nation's civil defense program. The study will focus on the Defense Civil Preparedness Agency is an effort to determine its operating efficiency. GAO plans to investigate the practicality of the Agency's programs and the effectiveness of its assistance to states and local communities. GAO is particularly concerned about possible overlap and inefficiency between DCPA, FDAA, and FPA. Recently DCPA has been helping anticipate and prepare for possible crises. Once a disaster has occurred, the FDAA has assumed operational responsibility. FPA has played an overall supervisory and coordinating role. GAO will investigate how these divided responsibilities operate in practice.

Concurrently, the Senate Government Operations Committee has begun to examine the DMPA, FPA, FDAA, and the Emergency Preparedness Office of the Secretary of the Interior. The Government Operations staff has concerned that considerable overlap existed in the programs of these agencies.

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[17] U.S. Congress. House. Committee on Government Operations. Reorganization Plan No. 1 of 1973: House Report No. 93–106, 93rd Congress, 1st Session. Washington, U.S. Government Printing Office, 1973, p. 19.

Organization

While promising, these inquiries will stop short of an overall assessment of both emergency preparedness and planning efforts in this country and the wisdom of the new administrative structure set up under Reorganization Plan Number 1 of 1973.

The Committee staff believes that now—three years after that reorganization—an investigation into preparedness operations is in order. During recent years a trend toward decentralizing governmental functions has emerged, but serious questions exist about whether the nation benefits from decentralization of emergency preparedness activities. Alternatives to the present arrangement must be examined for their possible benefits.

The current policy of the U.S. is to operate a decentralized system, coordinated by an agency located in GSA, the Federal Preparedness Agency. FPA retains some of the operational duties of OEP, most notably in maintaining stockpiles and underground facilities and supplies, but compared to its predecessor, FPA is relatively free of operational responsibility. Its main responsibility is to provide policy guidance for emergency preparedness programs and to coordinate programs throughout the U.S. government. The Agency operates with a staff of over 200 people and with an unclassified administrative budget of about $7 million. Ten regional offices provide guidance to other Federal field offices and to state and local governments in planning and developing their readiness programs. Beyond its administrative structure, FPA has three main divisions: (1) Conflict Preparedness runs emergency facilities, "Continuity of the U.S. Government" operations, and other programs; (2) Civil Crisis Preparedness handles stockpiles. industrial mobilization, and crisis management; and (3) Research, Development, and Program Development explores increasingly-sophisticated technologies.

A discussion of the relative merits of the present and alternate administrative structures might start with an examination of the decision to dismantle OEP and to establish FPA. Nixon said that he was acting "in the interest of efficiency and economy." Later, in testimony, Fred Malek, Deputy Director of the Office of Management and Budget, stated:

> One objective is to reduce the size of the Executive Office, but, more important is the need for reorienting the Executive Office to focus on its original mission as a staff for top-level policy formation and monitoring of policy execution in broad functional areas. These actions are also consistent with the President's overall purpose of strengthening and upgrading the capacity of our line departments and agencies, and to press for further decentralization of Federal activity to field offices and even to the communities themselves, wherever we can bring the Government closer to the people.[18]

The staff found that most people interviewed placed great stress on the political pressure to cut back the Executive Office. One FPA official argued that the President was trying to prod agencies and departments to rethink and restructure their administrative organizations. Others pointed to a longstanding antagonism between OMB and OEP and noted that a committee chaired by OMB director Roy Ash had recommended a restructuring of OEP. According to this argument, OMB had always seen OEP as a rival, so when the idea of reorganizing government gained favor and OEP issued some reports embarrassing to the Administration, OMB seized the occasion and moved to revamp OEP.

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[18] U.S., Congress, House, Committee on Government Operations, "Reorganization Plan No. 1 of 1973, Hearings," before a subcommittee of the Committee on Government Operations, House of Representatives, 93rd Congress, 1st sess., February 26, 1973, p. 3.

Whatever the reasons, current debate on different administrative arrangements should focus on several key questions. One policy matter is whether the lead coordinating agency should have operational responsibility, and if so, how much.

The staff found agreement that the lead agency is probably better off without responsibility for oil and natural disaster programs. FPA spokesmen and critics generally agree that reduction of natural disaster responsibilities has benefitted FPA. One official observed that OEP's work had always been characterized by a stop-and-go quality. People would begin a project only to be interrupted when some natural disaster would demand their attention. Now that FDAA has taken over the handling of natural disasters, the problem has been alleviated. Similarly, a consensus seemed to exist that oil matters had become so complex and vital that they were better handled separately.

Whether the central coordiinating agency should be free of all operational responsibility is a more controversial subject. Critics argue that first-hand exposure to emergencies and personal experience in handling them insure that planning preparedness, and coordination efforts remain realistic. They insist that cutting administrators and planners off from immediate contact with emergency conditions leads to an isolation that has a detrimental effect on efforts to make efficient, realistic preparations.

A top FPA official admitted that he was not certain what structure would be most advantageous. He ended up suggesting that the best solution might be not a "restored OEP" or the present setup, but a hybrid structure—a centralized agency with operational responsibilities which stopped short of natural disasters and oil policies.

Another issue centers on the importance of the specific location of the coordinating agency within the government[19] OEP, by virtue of its location in the Executive Office of the President, exercised considerable "clout." The staff found universal agreement that FPA carries less political prestige and muscle than its predecessor. As a result, FPA requests elicit slower responses, involve more red tape, and, generally, take a longer time.

The diminished "clout" of FPA raises serious questions about the importance and effectiveness of its leadership role. Some argue that it is imperative that the Agency be moved from GSA and either be set up by itself or be attached to the National Security Council, Domestic Council, or the Office of Management and Budget. This line of argument is based on the view that the coordinating agency has to occupy a significant position to possess enough authority to command respect and to be effective. Prime location is important, if only to insure that the President is aware of the coordinating agency's services and makes use of them. Proponents of this view believe that under the present structure Executive decisionmakers are frequently unaware that FPA has information which would be of use to them.

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[19] An Arthur D. Little study on "Industrial Preparedness in an Arms Control Environment," prepared in December 1974 for the Arms Control and Disarmament Agency (ACDA), also raised the issue of location: "It is possible to point out areas in the preparedness system where effort might be rewarded with improvement. One such area is the standby organization for industrial mobilization. The principal issue here appears to be the level at which the primary mobilization coordination responsibility is fixed within the Executive Branch. * * * The link with arms control * * * may not have been fully appreciated when the 1973 decision was made and its emerging significance suggests that a different disposition should at least be considered."

It seems clear that FPA does not play a major policy role in crisis situations. Frequently, when a project has needed to be organized quickly and political muscle has been required, the Office of Management and Budget has taken command of the situation. As an OMB official observed, "crisis direction was required, and it had to be out of the President's office."

The issue is whether OMB is suited to its new role. Critics contend that it is not. They stress that while OMB has Executive clout, it does not have the expertise required to successfully handle emergencies. They argue that there is high pay-off in using people who have had experience in planning for and coping with emergency situations. Reliance on those with prior experience is particularly important in improving efficiency during the first seventy-two hours of the emergency. In the view of critics, OMB is ill-suited to its fire-fighting role: it cannot provide the expertise necessary to expedite the handling of emergencies.

Another major policy question concerns the effectiveness of coordination. Critics charge that present efforts are inefficient and fragmented. A 1974 Arthur D. Little study lent credence to this view, finding that "officials familiar with the preparedness system feel concern over divisions of responsibility, possible gaps between agencies, and a lack of full coordination." The study concluded, "An effort to confirm these views and develop remedies for such deficiencies as are verified seems warranted." [20]

In its own investigation, the staff found particular concern over the uneven coordination between state and local agencies and the Federal bureaucracy. States apparently find it difficult to work with the reorganized Federal structure. They would prefer to deal with a single unified Federal agency capable of granting them lump sum grants. The present fragmented system—in which agencies have overlapping jurisdictions and coordination efforts prior to an emergency are distinct from those following a disaster—frustrates and confuses them. States have problems identifying the source of needed funds, and they have trouble complying with the "strings" frequently attached to grants. The use of funds allocated by the Defense Civil Preparedness Agency seems to have been a subject of particular controversy.

FPA officials acknowledge these problems. They were eager to improve coordination with state and local agencies. In addition, they (and FDAA officials) indicated that contact between FPA and FDAA is minimal and that coordination between the two agencies is in need of improvement.

Despite these problems, FPA representatives believe that the system works better than critics charge. Problems that have surfaced reflect in large part the settling out of the new administrative apparatus, and generally, coordination within the Federal bureaucracy is effective. Difficulties are being worked out through administrative arrangements and informal agreements.

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[20] Arthur D. Little, "Industrial Preparedness in an Arms Control Environment," p. 68.

Finally, in this time of government deficits and tight budgets, comparative budgetary figures will also have to be considered. When the Nixon Administration presented Reorganization Number 1, official spokesmen heralded savings of some $2 million, but none of the savings was to result from the restructuring of the emergency agencies. In fact, a high FPA official has suggested that the present decentralized set-up is more expensive to operate. If true, it is only natural to examine what advantages the new structure offers and to ask whether they warrant the additional expenditures.

Planning

An evaluation of planning efforts within the government seems wise in light of widespread skepticism about planning. Critics contend that the level of planning has been excessive in the past and that efforts that are undertaken in the future should be more realistic, emphasizing existing structures and resources rather than relying on contingency structures and plans. They view planning efforts as an academic exercise, an impractical activity conducted in a world of contingencies too often separated from more mundane realities. They argue that planning is an expensive luxury that is hard to justify when all programs are being scrutinized for possible savings and other programs provide more concrete and visible results.

Former OEP officials and current FPA spokesmen strongly defend the need for advance planning. In defining planning, they speak of the anticipation of potential crises and preparation of appropriate governmental responses, including the establishment of procedures, the perfection of methodologies, the collection of important data, and the identification of skilled personnel. These officials argue that the complexity and increasing interdependence of the world and the concurrent growth in the potential for and ramifications of devastating disasters make advance work absolutely essential.

FPA officials expressed concern that the present administrative apparatus and appropriations process were biased against planning efforts. No single appropriations control point exists to insure that enough money has gone into planning. Individual committees of the Congress make independent decisions on each agency's request without any concern for the overall outcome. FPA cannot exert the political muscle that OEP could, and no one else has a big stake in contingency planning. Consequently, when agencies negotiate their budgetary requests and Congressional committees give them further examination, funds requested for planning efforts are particularly vulnerable.

The ending of the delegate agency funding process was of particular concern to FPA officials. Under this system the lead preparedness agency maintained control over funds, when it used to insure that vital planning efforts went ahead. According to FPA representatives, the existence of the fund gave the lead agency both latitude and leverage, while also simplifying the accounting of expenditures in the emergency area. Congress eliminated the system, in part, because it made more difficult efforts to keep track of the exact sums each department was spending on preparedness efforts. FPA officials did not recommend restoration of the delegate agency funding process, but insisted that some type of budgetary pool was necessary to insure continuity of planning and to guarantee completion of any planning whose impact extends beyond a single department.

FPA officials were more concerned about the future implications of the decreasing interest in preparedness planning than about the present results. They worried that the cumulative effort of the small incremental steps in which planning efforts were receiving less and less support would be extremely serious. They emphasized that certain types of planning were dynamic and in need of constant revision, and they expressed fears that this planning would become obsolescent and would deteriorate to a dangerous point.

The staff believes that further investigation of these issues is warranted. In the face of an evident decline in planning efforts, the amount of planning the nation should support is an obvious area of inquiry. The problem is to find the elusive mean between excessive and inadequate planning. The staff believes that concerns expressed by FPA officials are legitimate, but that they must be coupled with a recognition that planning inevitably has diminishing returns. It does not seem wise to prepare elaborate plans for every possible contingency. Certain types of planning might be carried out in specific parts of the nation and then be applied elsewhere as required. Planning may be most viable for crises of a limited nature, as a former OEP official suggested. Some thought is required to insure that planning is conducted not just with an eye to maximizing efficiency, but also with an eye to confining actions to the restraints of the Constitution and the law. Efforts must be made to make certain that advance planning is formulated to provide procedures for the protection of civil liberties and that all emergency preparations are in accordance with constitutional processes. It is essential to assess the impact of specific planning in a broader framework. For instance, plans for relocating whole segments of the population in the event of a nuclear threat must be considered within the perspective of an overall policy of nuclear parity. Such plans might be viewed by an enemy as our preparation for a first strike and be escalatory in ways that were unintended. At the same time, relocation plans may violate important civil liberties.

The quality and efficiency of current planning efforts must be examined along with other questions, such as the extent to which affected agencies are involved in advance planning. It will be important to judge how well officials are anticipating the diverse types of emergencies that might occur. War and natural disasters are the commonest but the near default of New York City suggests an entirely different realm of economic emergencies and raises the question whether other possible calamities have been anticipated.

Any investigation should not neglect the critical importance of the lead organizational agency. The coordinating agency plays a key role, particularly in charting unexplored terrain, such as the possible dangers of world terrorism and peacetime nuclear emergencies. It seems wise to examine both the contention of FPA officials that the central agency should serve as a control point in the allocation of funds and the suggestion of others that the diminished political muscle of the FPA has materially hurt planning efforts.

Any assessment of planning and preparedness efforts in the United States should give certain areas special scrutiny. In April 1973, the strategic and critical materials stockpile objectives were reduced by a quantity valued at more than $4 billion. The rationale for this abrupt change in policy is unclear. An investigation by GAO seems to be leading to a reevaluation of stockpile assumptions, but it is essential that Congress insure that the nation's policies in this area are not subject to dramatic fluctuation or political whim.

Another issue concerns Executive Reserves. Under this program, selected American citizens are assigned key governmental roles which they are to assume in an emergency. In effect, these officials constitute a type of "shadow government." Serious questions—such as the extent of the program, the type of individuals involved, the advisability of public disclosure, and the manner of activation of these reserves—suggest the need for further investigation. In December 1973, in testimony before the Senate Interior Subcommittee on Integrated Oil Operations, Senator Lee Metcalf expressed concern about the extent of industry representation in the Emergency Petroleum and Gas Administration Executive Reserve. The staff of the Special Committee feels that the extent of industry control in all Executive Reserve programs merits investigation. An inquiry seems wise in view of the findings of the House Small Business Subcommittee on Energy and the Environment that "politicalization" and "disregard for conflict of interest considerations" plague the Presidential Executive Interchange Program created by President Johnson in 1969.

Another issue involves representation of the chief preparedness agency on the National Security Council. OEP was represented on that body, but the preparedness representative was removed in the 1973 reorganization. The staff heard different views on this issue. A former OEP official felt that it would be difficult to make a compelling case for representation, since most of the items on the National Security Council agenda are matters concerning the CIA and State and Defense Departments. An FPA official felt that the chief preparedness agency should naturally be represented on that group, but was under no illusion that membership would bring immediate influence.

Civil Liberties

Finally, there are a range of government programs which warrant investigation because they pose a potential threat to civil liberties. Emergency censorship demands more thorough scrutiny. In 1972, the House Government Operations Subcommittee on Foreign Operations and Government Information held hearings on the "Wartime Information Security Program," but these hearings did not constitute an exhaustive inquiry.

The maintenance of lists of people to be watched or to be detained in time of national emergency is another sensitive area. Of particular concern are contingency plans, developed by the Justice Department, for a domestic emergency. In an article by Harvard law professor Alan Dershowitz appearing in the March/April, 1973, *Liberty*, Richard Kliendienst, the Deputy Attorney General at that time, is quoted as saying: "We have careful plans ready to be put into effect in the event of any emergency requiring Federal troops." The Senate Select Committee on Intelligence Activities and the House Judiciary Subcommittee on Civil Liberties have begun investigations of these matters, but the Congress still awaits the results of these inquiries.

Another matter of concern is the number of organizations which have been established in a dormant status to be activated upon the President's determination in a national emergency. Planned agencies, such as the Office of Defense Resources and the Office of Economic Stabilization, may require further study.

Perhaps the operation most in need of scrutiny is the series of government relocation centers operated under the FPA's "continuity of government" program. Recent articles by Richard P. Pollock in *The Progressive* [21] and the new Washington weekly, *Newsworks*,[22] have detailed the operations of Mount Weather and other relocation sites operated outside Washington, D.C. The staff is concerned about the lack of Congressional oversight and the absence of evidence that these facilities are being run in accordance with constitutional processes. If these programs are to continue, it is imperative that adequate safeguards exist in the activation and operation of Mount Weather and other relocation sites. The Senate Judiciary Subcommittee on Constitutional Rights has begun to probe this area but has found it difficult to penetrate the veil of secrecy surrounding these programs.

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[21] Richard P. Pollock, "The Mysterious Mountain," The Progressive, Madison, Wis., March 1976, pp. 12–16.

[22] Richard P. Pollock, "Flight 514 and the Secret of Mount Weather." Washington News works, Washington, D.C., February 12–18, 1976, pp. 7–8.

III

THE NATIONAL EMERGENCIES ACT (P.L. 94–412)

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INTRODUCTION OF S. 3957, 93RD CONGRESS

[Congressional Record—v. 120, Aug. 22, 1974—pp. S15784–S15794]

A NATIONAL EMERGENCIES ACT

Mr. CHURCH. Mr. President, in his address to the joint session of Congress on Monday, August 12, President Gerald Ford said that "we have work to do." President Ford addressed this imperative to the Congress.

On behalf of the eight members of the Special Committee on National Emergencies and Delegated Emergency Powers. Senator Mathias, the cochairman of this committee, and I introduce today a National Emergencies Act. In the view of the Special Committee, this proposed legislation is urgent work for the Congress and the Executive branch. The Special Committee strongly recommends that this legislation be acted upon, if at all possible, before the Congress adjourns.

For over a year and a half, the Special Committee has been engaged in a study of the effects of emergency rule upon the constitutional government of the United States. Most Americans are unaware that they have been living under a continuous state of national emergency since 1933. In fact, there are four states of national emergency now in force:

The national emergency declared by President Roosevelt on March 6. 1933, to meet the crisis of the depression has still not been formally terminated.

The December 16, 1950, national emergency declared by President Truman in order to better prosecute the Korea War is still in force.

The national emergency declared by President Nixon on March 23, 1970, to handle the Post Office strike is still in force.

The national emergency declared by President Nixon on August 15, 1971, to carry out currency restrictions and to enforce foreign economic controls still remains in force.

These four states of national emergency confer upon the President the power contained in over 470 emergency statutes to control the lives of all American citizens in a host of particular ways. It is important to understand that these laws affect every area of American life.

It is fortunate that at this time, when the fears and tensions of the Cold War are giving way to relative peace, and détente is now national policy, Congress has had the opportunity to assess the statutes—some 470 significant provisions become known as emergency powers legislation. Emergency powers make up a relatively small but important body of statutes out of the total of thousands that have been passed or recodified since 1933. But emergency powers laws are of such importance to civil liberties, to the operation of domestic and foreign commerce, and the normal functioning of the U.S. Government, that Congress should delay no longer in regularizing their use.

A number of conclusions can be drawn from the Special Committee's study and analysis of emergency powers laws now in effect. Congress has, in large measure, permitted the Executive branch to draft and thus to "make the laws." This has occurred despite the constitutional responsibility conferred on Congress by article I, section 8 of the Constitution which states that it is Congress that "makes all Laws."

Most of the 470 statutes pertaining to emergency powers were passed in times of real or perceived crisis. Bills drafted in the Executive branch were sent to Congress by the President and, in most cases, were approved with only the most perfunctory Committee review. Virtually no consideration was given to their effect on civil liberties or their impact on the constitutional balance between the Executive and Legislative branches of the Government. For example, the economic measures that were passed in 1933 pursuant to the proclamation of March 5, 1933, by President Roosevelt, asserting that a state of national emergency existed, were enacted with the most unseemly haste. There was a total of only eight hours of debate in both houses. There were no committee reports; indeed, only one copy of the bill was available on the floor.

This pattern of hurried and inadequate consideration was repeated during World War II when another group of laws with far-reaching implications was passed. It was repeated once more during the Korean War and, again, in most recent memory, during the debate on the Tonkin Gulf Resolution, passed on August 6, 1964.

On occasions, legislative history shows that during the limited debates that did take place, a few, but very few, objections were raised by Senators and Congressmen expressing concern about the lack of provision for Congressional oversight, as well as the absence of any terminal date for the authorities granted. Their speeches raised legitimate doubts about the wisdom of giving such open-ended authority to the President, with no procedural means provided to withdraw that authority once the emergency had passed.

For example, one of the very first of these laws, enacted in 1933, was the Emergency Banking Act based upon section 5(b) of the Trading With the Enemy Act of 1917. This act gave to President Roosevelt, with the full approval of Congress, the power to control major aspects of the economy, an authority which had formerly been reserved to the Congress. A portion of that act, still in force, is quoted here to illustrate the kind of open-ended authority Congress has typically given to the President during the past 40 years:

> (b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—
>
> (A) investigate, regulate, or prohibit, any transaction in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or ear-marking of gold or silver coin or bullion, currency or securities, and
>
> (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,
>
> by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national

thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

The repeal of almost all of the Emergency Detention Act of 1950 was a constructive and necessary step, but the following provision remains:

18 U.S.C. 1383. Restrictions in military areas and zones.

Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive order of the President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.

On its face, 18 U.S.C. 1383 does not appear to be an emergency power. A similar law, the Alien Detention Act, was used as the basis for internment of Japanese Americans in World War II. Although it seems to be cast as a permanent power, the legislative history of the section shows that the statute was intended as a World War II emergency power only, and was not intended to apply in "normal" peacetime circumstances. Three years ago, the Emergency Detention Act was repealed, yet 18 U.S.C. 1383 has almost the same effect. In the view of the Special Committee, this provision should be repealed.

What these examples suggest, and what the magnitude of emergency powers affirm, is that most of these laws do not provide for Congressional oversight or termination. There are two reasons which can be adduced as to why this is so. First, few, if any, foresaw that the temporary states of emergency declared in 1933, 1939, 1941, 1950, 1970, and 1971, would become what are now regarded collectively as virtually permanent states of emergency—the 1939 and 1941 emergencies were terminated in 1952. Forty years can, in no way, be defined as a temporary emergency. Second, the various administrations which drafted these laws were uninterested in providing for Congressional review, oversight, or termination of these delegated powers which gave to the President such wide-ranging authority.

The climate of crisis which sped these emergency laws through Congress is well exemplified by the language in President Truman's 1950 proclamation:

> Whereas recent events in Korea and elsewhere constitute a grave threat to the peace of the world and imperil the efforts of this country and those of the United Nations to prevent aggression and armed conflict; and
>
> Whereas world conquest by communist imperialism is the goal of the forces of aggression that have been loosed upon the world; and
>
> Whereas, if the goal of communist imperialism were to be achieved, the people of this country would no longer enjoy the full and rich life they have with God's help built for themselves and their children; they would no longer enjoy the blessings of the freedom of worshipping as they severally choose, the freedom of reading and listening to what they choose, the right of free speech, including the right to criticize their Government, the right to choose those who conduct their Government, the right to engage freely in collective bargaining, the right to engage freely in their own business enterprises, and the many other freedoms and rights which are a part of our way of life; and
>
> Whereas, the increasing menace of the forces of communist aggression requires that the national defense of the United States be strengthened as speedily as possible:
>
> Now, therefore, I, Harry S Truman, President of the United States of America, do proclaim the existence of a national emergency, which requires that the military, naval, air, and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repel any and all threats against our national security and to fulfill our responsibilities in the efforts being made through the United Nations and otherwise to bring about lasting peace.
>
> I summon all citizens to make a united effort for the security and well-being of our beloved country and to place its needs foremost in thought and action that the full moral and material strength of the Nation may be readied for the dangers which threaten us.
>
> I summon our farmers, our workers in industry, and our businessmen to make a mighty production effort to meet the defense requirements of the Nation and to this end to eliminate all waste and inefficiency and to subordinate all lesser interests to the common good.
>
> I summon every person and every community to make, with a spirit of neighborliness, whatever sacrifices are necessary for the welfare of the Nation.
>
> I summon all State and local leaders and officials to cooperate fully with the military and civilian defense agencies of the United States in the national defense program.
>
> I summon all citizens to be loyal to the principles upon which our Nation is founded, to keep faith with our friends and allies, and to be firm in our devotion to the peaceful purposes for which the United Nations was founded.
>
> I am confident that we will meet the dangers that confront us with courage and determination, strong in the faith that we can thereby "secure the Blessings of Liberty to ourselves and our Posterity."
>
> In Witness Whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.
>
> Done at the City of Washington this 16th day of December (10:20 a.m.) in the year of our Lord nineteen hundred and fifty, and of the Independence of the United States of America the one hundred and seventy-fifth.

The pervasive sense of crisis so evident in Truman's proclamation has fortunately eased. The legislative shortcomings contained in these many emergency laws can now be corrected on the basis of a rational review and revised procedures for the future.

In the view of the Special Committee, an emergency situation does not now exist. Congress, therefore, should act now to terminate the states of national emergency presently in effect.

At the same time, the Special Committee is of the view that the President must be left free to deal effectively in the case of future emergencies. It is reasonable to keep a body of laws in readiness for the President's use, whenever a new national emergency occurs. That portion of the concurring opinion given by Justice Jackson in the Youngstown Steel case with regard to emergency powers, provides sound guidelines for the maintenance of such a body of emergency laws kept in readiness. Justice Jackson, supporting the majority opinion that the "President's power must stem either from an act of Congress or from the Constitution itself" wrote:

> The appeal, however, that we declare the existence of inherent powers *ex necessitate* to meet an emergency asks us to do what many think would be wise, although it is something the forefathers omitted. They knew what emergencies were, knew the pressures they engendered for authoritative action, knew, too, how they afford a ready pretext for usurpation. We may also suspect that they suspected that emergency powers would tend to kindle emergencies. Aside from suspension of the privilege of the writ of habeas corpus in time of rebellion or invasion, when the public safety may require it, they made no express provision for exercise of extraordinary authority because of a crisis. I do not think we rightfully may so amend their work, and, if we could, I am not convinced it would be wise to do so, although many modern nations have forthrightly recognized that war and economic crises may upset the normal balance between liberty and authority. Their experience with emergency powers may not be irrelevant to the argument here that we should say that the Executive, of his own volition, can invest himself with undefined emergency powers.
>
> Germany, after the First World War, framed the Weimar Constitution, designed to secure her liberties in the Western tradition. However, the President of the Republic, without concurrence of the Reichstag, was empowered temporarily to suspend any or all individual rights if public safety and order were seriously disturbed or endangered. This proved a temptation to every government, whatever its shade of opinion, and in 13 years suspension of rights was invoked on more than 250 occasions. Finally, Hitler persuaded President von Hindenburg to suspend all such rights, and they were never restored.
>
> The French Republic provided for a very different kind of emergency government known as the "state of seige." It differed from the German emergency dictatorship particularly in that emergency powers could not be assumed at will by the Executive but could only be granted as a parliamentary measure. And it did not, as in Germany, result in a suspension or abrogation of law but was a legal institution governed by special legal rules and terminable by parliamentary authority.
>
> Great Britain also has fought both World Wars under a sort of temporary dictatorship created by legislation. As Parliament is not bound by written constitutional limitations, it established a crisis government simply by delegation to its Ministers of a larger measure than usual of its own unlimited power, which is exercised under its supervision by Ministers whom it may dismiss. This has been called the "high-water mark in the voluntary surrender of liberty," but, as Churchill put it, "Parliament stands custodian of these surrendered liberties, and its most sacred duty will be to restore them in their fullness when victory has crowned our exertions and our perseverance." Thus, parliamentary controls made emergency powers compatible with freedom.
>
> This contemporary foreign experience may be inconclusive as to the wisdom of lodging emergency powers somewhere in a modern government. But it suggests that emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the "inherent powers" formula. Nothing in my experience convinces me that such risks are warranted by any real necessity, although such powers would, of course, be an Executive convenience.
>
> In the practical working of our Government we already have evolved a technique within the framework of the Constitution by which normal Executive powers may be considerably expanded to meet an emergency. Congress may and has granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in war or upon proclamation of a national emergency. In 1939, upon Congressional request, the Attorney General listed ninety-nine such separate statutory grants by Congress of emergency or

> wartime Executive powers. They were invoked from time to time as need appeared. Under this procedure we retain Government by law—special, temporary law, perhaps, but law nonetheless. The public may know the extent and limitations of the powers that can be asserted, and persons affected may be informed from the statute of their rights and duties.
>
> In view of the ease, expedition and safety with which Congress can grant and has granted large emergency powers, certainly ample to embrace this crisis, I am quite unimpressed with the argument that we should affirm possession of them without statute. Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction.
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> * * * * * * *
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> But I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. A crisis that challenges the President equally, or perhaps primarily, challenges Congress. If not good law, there was worldly wisdom in the maxim attributed to Napoleon that "the tools belong to the man who can use them." We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.
>
> The essence of our free Government is "leave to live by no man's leave, underneath the law"—to be governed by those impersonal forces which we call law. Our Government is fashioned to fulfill this concept so far as humanly possible. The Executive, except for recommendation and veto, has no legislative power. The Executive action we have here originates in the individual will of the President and represents an exercise of authority without law. No one, perhaps not even the President, knows the limits of the power he may seek to exert in this instance and the parties affected cannot learn the limit of their rights. We do not know today what powers over labor or property would be claimed to flow from Government possession if we should legalize it, what rights to compensation would be claimed or recognized, or on what contingency it would end. With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.
>
> Such institutions may be destined to pass away. But it is the duty of the Court to be last, not first, to give them up.

Within the guidelines so profoundly expressed in the Youngstown case, and against the background of the last 40 years, the Special Committee has drawn up the proposed legislation we introduce today. The Special Committee has done so by working in close cooperation with all of the standing committees of the Senate and all departments, commissions, and agencies of the Executive branch.

I might say, Mr. President, that I have enjoyed the close cooperation of my fellow chairman of this unique committee. It is the only bipartisan committee in the Congress, consisting of four Republican and four Democratic members. My cochairman, Senator Mathias, has not only worked diligently in the drafting of this legislation but he has made the work of the Committee completely bipartisan in every way. We feel that the bill we are introducing today is not an expression of any party position but is a matter of equal concern to both parties interested in the restoration of a proper balance in our constitutional system. For that reason, it was possible for the members of the Committee to reach unanimous agreement.

I also wish to say that we have enjoyed the support of both the Democratic and Republican leaders of the Senate, and they, too, have indicated their endorsement of the bill we introduce today.

Finally, and perhaps most importantly, Senator Mathias and I met with the President this morning. We discussed with him the bill that we are today introducing. He was most interested, and indicated that he favored the objective we sought and that his administration would be prepared to cooperate with us in bringing this long period of emergency government to an end so that the processes of the constitutional system could be returned to normal.

I take great heart from the encouragement we received today at the White House.

I think it is now possible for us to achieve a purpose that will well serve the country. It looks as though the work of this Committee will be crowned with success.

I express my personal gratitude to the distinguished Senator from Maryland (Mr. Mathias) for the tremendous help he has been and support he has given to the effort through the last 18 months.

The proposed National Emergencies Act contains four main sections. The first section would terminate the four existing declared emergencies. The date upon which the termination takes effect would be nine months after the date of enactment. This nine month grace period has been included to provide sufficient time for standing committees and Executive branch departments and agencies to determine which of the emergency statutes should be retained in the form of permanent law. This may be necessary in a few areas such as foreign monetary control where, over the years, the use of emergency power has become everyday governmental practice. This nine month grace period would permit the legislative committees and Executive departments and agencies to consider permanent legislation in the normal legislative manner. All of the committees and all of the departments and agencies are aware of the problem areas that affect their respective jurisdictions and are already at work devising legislative solutions.

The next section would provide a procedure to govern the handling of future national emergencies. The President, by proclamation, would declare the existence of a state of national emergency. His proclamation would be made public and would be published immediately in the *Federal Register*. The President would specify his reasons for declaring the emergency and the statutory powers he intended to invoke. The Congress would have six months to affirm or reject the President's use of these powers. If the Congress did not act, the declared emergency would lapse after six months. States of national emergency could be extended by six-month periods, but each extension would require an affirmative act of the Congress.

The third section would require an accounting of all significant actions taken by the President pursuant to emergency powers invoked during a declared state of national emergency.

The final section is a list of statutes to be repealed. These statutes have been agreed upon by the standing committees and the executive branch departments and agencies as obsolete, and they should be stricken from the books.

The Special Committee has, on its own initiative, added one statute to this list which the Special Committee believes poses such a serious threat to civil liberties that it should be repealed; 18 U.S.C. 1383 which gives the President, the Secretary of the Army or any general the authority to declare any part, or even all, of the United States a military zone, within which any act he so designates may be punishable as a crime. This provision is similar to the Alien Detention Act under which Japanese Americans were interned during World War II. It was repealed in 1970. In view of the Special Committee, there is no valid reason to keep such a statute on the books.

President Ford appealed to the Congress to work with him to heal the wounds that have developed during the past decade or more. The record of cooperation between the Legislative and Executive branches during the Committee's efforts to work out the problem of how to provide for expeditious action during times of war or severe crisis, and yet do so under a constitutional framework, has been exemplary. Both branches have worked at the task with openness and a real sense of united purpose. The members of the Special Committee are proud to be able to point to this final example of cooperation between the branches.

We have had the support of several Secretaries of Defense and the direct assistance of three Attorneys General, particularly from former Attorney General Richardson and the present Attorney General Saxbe. Since he took over the Justice Department, Attorney General Saxbe has fully supported the purposes of the Special Committee and has contributed in significant ways to the legislation which is proposed today.

The prodigious research required to bring together the statutes and Executive orders concerned with war or national emergency could not have been achieved without the help of all the Executive departments and agencies. Our colleagues in the Senate should know that without the assistance of the Air Force and its LITE computer system, it would have been almost impossible to identify and compile all of the statutes that are triggered by a state of national emergency. We are especially grateful for the assistance rendered by the staff of the *Federal Register* whose vitally important but largely unsung work should receive far more attention. The Special Committee owes a special debt to the legislative reference service, particularly the American Law Division of the Library of Congress, and to many of this country's most distinguished political scientists and constitutional lawyers who have given generously of their time to assist the Committee in its difficult task.

This proposed legislation also reflects the advice of former Attorneys General and other high officials who had occasion to use the awesome powers contained in the emergency statutes.

The Constitution and the Bill of Rights represent our historic endeavor to restrain the power of government for the benefit of all our citizens. In the nearly 200-year history of the American Republic, the United States has grown huge. She is today the mightiest nation on earth. But her glory rests not on her prowess; it rests on the freedom that still endures.

Reflecting on the erosion of freedom brought on by recurrent emergency, James Madison observed:

> Those truths are well established. They are read in every page which records the progression from a less arbitrary to a more arbitrary government, or the transition from a popular government to an aristocacy or a monarchy.

It is with the purpose of strengthening open constitutional processes that we introduce the National Emergencies Act today. I urge my colleagues in the Senate to support this legislation and to make it the law of the land before the end of this session.

Mr. President, I send the bill to the desk and ask unanimous consent that it be referred to the Government Operations Committee of the Senate.

The Presiding Officer (Mr. Taft). Without objection, it is so ordered.

Mr. Church. Mr. President, I ask unanimous consent that the text of the bill and the text of an interim report by the Special Committee on National Emergencies and Delegated Emergency Powers in support of a recommended National Emergencies Act be printed in the Record following the remarks I have made and the remarks of the cochairman, Senator Mathias, who will now take the floor.

The Presiding Officer. Without objection, it is so ordered.

Mr. Mathias. Mr. President, the distinguished Senator from Idaho, my colleague as cochairman of the Special Committee on National Emergencies, has spoken of the bipartisan nature of that Committee. I should like to point out that the reason why the Committee has this unique bipartisan character is that the Senator from Idaho made it possible. As the member of the Majority who had taken the lead on his side of the aisle, he might well have insisted on being the partisan chairman of a partisan committee. He did not so insist. In fact, throughout the deliberations of our committee, on the contrary, he has insisted that this should be a bipartisan effort. He has been fair, considerate and constructive. I have valued very much our association in working together on this bill.

It is characteristic of him that he has insisted upon sharing not only the responsibility and the work, but also whatever rewards there are.

The Senator from Idaho has properly acknowledged the able help that the Committee has had from outside sources, and I want to join him in the thanks he has already rendered. We particularly wish to thank those officials in the Executive branch who have been extraordinarily helpful to our work so that we can say that the bill we have now introduced is not just the product of the thinking of a committee of the Senate, but it also reflects, in a very real way, the advice and counsel, and information and knowledge we have obtained from the Executive branch on this problem of emergency Government, which is of common interest to all branches of Government.

As the Senator from Idaho has said, we are grateful for the help of several Attorneys General—Attorney General Kleindienst, Attorney General Richardson, and Attorney General Saxbe. But we also have a particular debt to several Secretaries of Defense who showed a remarkable interest in this subject and whose department, curiously enough, was the repository of more information on this subject than any other single source. Secretary of Defense Melvin Laird was extraordinarily interested and cooperative, as was his successor, Secretary of Defense Elliot Richardson and the cooperation has continued under Secretary Schlesinger and his able legal staff.

So this bill is not one which reflects only the viewpoint of Congress. It is a bill which we have consciously designed to meet the needs of the Executive branch. It is a bill which I think expresses a common desire on the part of all of the branches of Government to return to a condition of government in which we are guided, day by day, in normal times and in times of crisis by constitutional procedures.

It was, of course, particularly gratifying to have an opportunity to discuss this measure with the President of the United States today prior to the introduction of the bill. I was very pleased, because it was concrete evidence of the fact that when the President came before the joint session of Congress a week ago and said that his administration was going to be an administration of communication, conciliation, cooperation, and compromise, he was not just making a speech for the momentary benefit of Congress and the public, but that he was stating a long-term policy which he is now already carrying out. I think this is an extremely good omen for the future.

The President, as we discussed the bill, was very quick to recognize one salient principal of the bill: that this bill will not remove any useful emergency power which Congress has heretofore delegated to the Executive branch, with the exception of those particular obsolete statutes which have been agreed upon jointly by both the standing committees and the pertinent department or agency of the executive branch. With the exception already noted and the group of obsolete statutes jointly agreed upon, no statutes are proposed to be repealed. While the statutes would go into a state of dormancy when the termination of the national emergencies takes effect, these emergency powers are available to be used upon proclamation of need by the President to meet any future emergency.

The President was very quick to recognize that this is the case: that we are not proposing to diminish any proper powers of the President, or to invade the Executive prerogative. What we are proposing is to terminate the states of national emergency which have existed without cease for 40 years—far too long—and we are proposing to substitute for the haphazard and potentially dangerous procedures of the past, regular and orderly constitutional processes by which Presidents in the future may summon up all the powers which might be necessary to meet crises and emergencies; and we are further providing means of oversight and that such powers may then revert to Congress when the crisis or the emergency is over.

In doing all of this, I think we recognize that those of us who have been elected to public office or appointed to positions of public trust have a special duty to protect the Constitution and the liberty of all citizens. The momentous march of events of the past four decades has weakened our constitutional processes and our liberty is now less secure. It is clear in looking back over 40 years that the guardians of the Constitution have not been as vigilant as the times required. The heavy toll of three long bloody and costly wars, a catastrophic economic depression and the fears and tension that marked the nuclear age and its diplomatic twin, the Cold War, has caused serious imbalances in our system of open democratic government.

We, in the Congress, are witness to the destructive processes of war, crises and emergencies. It is clear that we in the Congress, through neglect and lack of foresight and understanding, have contributed measurably to the weakening of constitutional government. But we in the Congress have the means to take the steps necessary to strengthen the constitutional processes that give purpose and substance to our liberties.

The Constitution assigns legislative responsibility solely to the Congress. Yet, for the last 40 years in most of the important areas of public policy, many laws were conceived and actually written by the Executive branch. As a consequence, the Congress, in far too many instances, exercises only a limited modifying role, and in a few extreme cases exercises a kind of reverse veto by enacting amendments which occasionally negate Executive lawmaking initiatives. Contrary to the authority delegated by the Constitution, the lawmaking roles of the Congress and the Executive have been reversed.

The effects of this failure by the Congress to make the law in the full sense intended by the founding fathers has in part contributed to the national disasters of our time.

Yet this neglect has not yet resulted in the stifling of our freedoms, although the warnings are many that individual liberty has been in danger. It is not a very large step from a small illegal police force to widespread abuse by an effective, efficient instrument of suppression. It is not a very large step from the relatively small scale illegal break-ins, buggings, mail covers, procurement of private records and burglaries to the abuses of an authoritarian police state. It is very evident that the genuine needs of our national security, have been perverted by a process of unreviewable actions taken under the guise of national security or some similar vague incantation justifying arbitrary action untested by the light of reason or the open processes of constitutional government.

Our founding fathers consciously placed in our Constitution the means to determine the real needs of the republic and laid down methods to provide for genuine national security. They also prescribed tests by which to reject spurious claims of national security which, in truth, have proven to be little more than cloaks for arbitrary rule. Two hundred years ago the authors of the Constitution sought to frame processes by which power could be used effectively for all of the people of the Nation. They also sought to prevent power from falling into the hands of a few to the detriment of the majority of the people.

Constitutional processes, in my view, means the open, careful and rational husbanding of the Nation's power. It is often said that power corrupts, but in my view, power can be used for good or for ill. Power used by men of good will in accord with the Constitution does not corrupt. But power used by willful men outside of constitutional authority can be corrupted, and as recent events have shown, when that happens, the Nation suffers.

The National Emergencies Act introduced here today has been written and conceived by Members of the Senate using the full resources of our constitutional processes. Against the tide of accepted practice created by the events of recent years, and through the rigorous process of hearings, study, and debate, we have sought to restore the legislative structure to its original constitutional dimension to provide for effective government during times of war or severe crisis. We have also sought to assure that each of the branches can use its respective powers, and carry out its assigned responsibilities under the Constitution, in order to contribute to a common purpose of national security.

The rolls of history are filled with the stories of the fall of democracies because of long wars or sustained crises. The fall of the Weimar Republic and the rise of Hitler is a memory many of us share. We seek to prevent the possibility of a repetition of that tragic chapter from world history in the United States. In my view, our Constitution provides the best means to remain a free people, but we in the Congress must meet our responsibilities to make the law if that hope is to be a lasting reality.

Over a year ago I went to see the late former Chief Justice Earl Warren to ask his views about the philosophical questions and theoretical problems that crisis governments pose to our constitutional system and the actual effects that 40 continuous years of national emergency has had on the Government of the United States. I do not think it would be a violation of his confidence if I shared the benefit of his views with the Senate. The former Chief Justice recalled that when he was attorney general of California during World War II, he played a significant role in the detention of Americans of Japanese ancestry. He explained that the detention of Japanese Americans was in large measure due to irrational fears generated by the pressures of World War II.

He reflected that this incident showed that unless there were firm statutory guidelines a crisis atmosphere can act to abridge constitutional rights and processes under the exigencies of the moment, "needs of the state," or the so-called demands of "national security." He told me that he realized that his actions during World War II, which had seemed necessary at the time, were in retrospect harmful to the American constitutional system. He said that he learned from his experience, and he went on to say that as Chief Justice of the Supreme Court, he had tried in every way possible to strengthen constitutional processes and particularly to protect the rights of all citizens. In that conversation we discussed the importance of the Youngstown Steel case, particularly the powerful remarks of Justice Jackson, which in Chief Justice Warren's view had most thoughtfully addressed the problem that extraordinary crisis situations such as war or severe national depression pose for constitutional government. In essence, he believed that Justice Jackson's views were a forceful and convincing definition of constitutional responsibility. Justice Jackson's opinion stressed that each branch has its responsibilities, and if each branch fully meets its responsibilities, there would be no legal doubts concerning who should "make the law" and how the laws should be executed.

Chief Justice Warren said that while the Constitution provides that only Congress can make the law, the legislature has the obligation through enacting statutes to provide firm policy guidelines for the Executive branch. The former Chief Justice agreed with Justice Jackson's view that where there are statutory guidelines, a President is obliged to follow the precepts contained in the laws passed by the Congress. Inherent powers problems arise and the other branches act, he said, largely when Congress fails to act definitively, when it fails to make needed laws and when there is a necessity for legislative action and Congress fails to meet the challenge.

We then discussed the outline and the constitutional concept that lay behind the legislative proposal to meet future national emergencies now before the Senate. Chief Justice Warren thought it was, in principle, a sound solution to what he recognized as a serious threat to constitutional government.

The Special Committee is of the view that the findings of the Youngstown Steel case so eloquently expressed by Justice Jackson, and as confirmed in the views of the late Chief Justice Earl Warren continue to be sound. In this legislative proposal that we now recommend to the Congress, after months of working in cooperation with the Executive branch, we believe we have met our constitutional responsibility "to make the law."

The proposed legislation now before the Senate was written in accordance with our Committee mandate: We have laid out statutory guidelines which we believe will provide the Executive with the flexibility and the effective power to meet any foreseeable future emergency, but to do so within established constitutional guidelines and constitutional procedures.

There were other possible courses of action to end the state of emergencies. The Special Committee could have recommended an outright repeal of the existing emergencies. This, in fact, was the initial inclination of some members of the Special Committee. But after a series of hearings, and after the staff had brought together an analysis of the 470 statutes triggered by a state of emergency, and when the members of the Special Committee had a fuller understanding of the long history of emergency government in the United States and in other nations throughout history from Greece and Rome to the Weimar Republic, we came to the conclusion that it would be irresponsible to propose a termination of the four concurrent states of national emergency without providing a means for declaring and terminating future emergencies. The Special Committee also decided it was necessary to enable the Executive and the Legislative branches, working jointly through the prescribed constitutional processes, to make the adjustments necessary for a return to normal government.

In 1816, Thomas Jefferson wrote to his friend Joseph C. Cabell, the cofounder with President Jefferson of the University of Virginia, of his growing concern that political power not fall into the hands of one man or a determined group of just a few men. He wrote:

> No, my friend, the way to have a good and safe government, is not to trust it all to one, but to divide it among the many, distributing to everyone the functions he is competent to.

Jefferson, in his letter to Cabell goes on to ask—

> What has destroyed liberty and the rights of man in every government which has ever existed under the sun?

Jefferson's answer was short and explicit:

> The generalizing and concentrating of all cares and powers into one body.

It is with Jefferson's admonition in mind that I urge the Senate to exercise "the function it is competent to"—to make the law and enact this proposal to strengthen our government of laws.

That, Mr. President, is why I am particularly pleased with the conversation we had this morning with the President of the United States who is supporting, in principle, the concepts that are embodied in the bill which the Senator from Idaho (Mr. Church) and I have now introduced on behalf of every member of the Special Committee, has also recognized that they reflect enduring constitutional principles which have been a part of our Government since the founding of the Republic, and which have been respected and recognized by the great Presidents of the Republic in every age.

[Text of S. 3957]

[Text of Interim Report—A Recommended National Emergencies Act]

NEED FOR EMERGENCY POWERS LEGISLATION

Mr. Pearson. Mr. President, I am proud to join with my colleagues on the Special Committee on the Termination of the National Emergency in sponsoring the National Emergencies Act. This bill is the product of a careful review of a President's emergency powers by a unique bipartisan committee.

In a very real sense, Mr. President, this bill complements other efforts which this Congress has taken to reinstate constitutional government as it was intended to function. We moved in Public Law 93–148, the War Powers bill, toward a reassertion of the right of Congress to declare war. In the budget reform measure, we reasserted the right of Congress to control government expenditures.

The National Emergencies Act, and these other laws, do not attempt to eliminate necessary and essential Executive powers which our country grants its President. Certainly there is a need for a President to operate, on his own initiative, with speed and efficiency in the face of a national crisis. However, I believe that excessive power in the hands of any one man is both undesirable and alien to our system of government.

During the past year and a half, all of us on the Committee have learned a great deal about the extent of the powers which a President may exercise during a "national emergency." With the aid of a highly professional and competent staff, we have compiled a list of statutes and Executive orders detailing the precise nature of this authority. After reviewing this list, I was amazed at the extent to which Congress has delegated special powers to a President who deems that the United States is facing an emergency.

My concern was increased when I realized that Congress bears a large share of responsibility for the steady accretion of emergency power. While Presidents can and have unilaterally declared that states of emergency exist, Congress has given them means to exercise extraordinary powers during these times. Thus, Harry Truman's declaration of a national emergency in 1950 had a major psychological impact. However, laws passed by Congress, such as the Defense Production Act, provided the legal basis for most of his subsequent actions.

There are nearly 500 such laws still on the books. Each law gives any President special powers during a "national emergency," during times of war, or when he deems that "war is imminent." The 1950 Emergency Proclamation, and three others are still on the books. As a result, each and every one of the Congressional delegations of power is today available for use by a Chief Executive.

Even more amazing than the number of laws granting special power to the President is the fact that there is no mechanism for reviewing or revoking these laws once they are no longer needed. Unlike inherent Presidential powers which can be reviewed by the Supreme Court, emergency powers are specific legal delegations of authority to a President. The Supreme Court has generally given deference to such delegations of authority. The laws are viewed as persuasive evidence of

Congressional intent that the President should be permitted special latitude during crises. Thus, unless the Congress itself imposes controls, emergency powers may remain largely unchecked.

For this reason, the bill sponsored by the Special Committee is a carefully measured step toward reimposition of Congressional control. First, the bill suspends the existing authority of a President to utilize the laws granting him powers during a national emergency. After placing these laws on a "shelf," we also require future Presidents to specify the powers which they wish to use once an emergency has been declared. I believe that this is preferable to permitting the President to choose his actions from a large residuum of unorganized, undefined, and often outdated legislative grants of authority.

Second, the bill imposes time limits on any future declaration of emergency. No emergency is effective beyond six months, unless specifically extended by Congress. This requires Congress to review any declaration of emergency and thereby imposes a degree of responsibility on Congress.

Also, the bill proposes the repeal of existing emergency status which the Committee and the Administration have agreed are no longer needed.

This bill is an important piece of legislation. Although it does not and cannot foresee every eventuality, it will interject a degree of thoughtful oversight over Executive decisionmaking.

Mr. President, I recently outlined in greater detail my thoughts on this matter in article published in the *Wichita Eagle* on August 18. I ask unanimous consent that the article be printed at this point in the Record.

[There being no objection, the article was ordered printed in the Record, as follows:]

THE PRESIDENT'S POWER

(By James B. Pearson)

Since 1950, any President of the United States, without prior consultation with Congress, has had the power to:

Order a federal take-over of all Wichita aircraft plants and other defense-related industry.

Declare the cities of Omaha and Colorado Springs to be military zones because of their sensitive defense facilities, and order the arrest of anyone entering or leaving these areas.

Regulate radio and wire communications, including Western Union, news agencies such as the Associated Press and United Press international.

Close the New York Stock Exchange, suspend all currency trading, after customs and import duties, and control shipping and rail transportation facilities.

No one seriously expects that in the absence of a major national or world upheaval that an American President would act so capriciously as to impose these Draconian measures. But the significant point is that a President could legally take these and many other even more sweeping action because since 1933 the United States has been technically and legally in a state of national emergency.

To most Americans, the idea of giving a President special powers when the future of the nation is at stake is not particularly frightening. We have often relied on a strong Executive to act quickly. This has been particularly true in time of war.

Most people do not realize, however, that a President can declare a national emergency on his own in peace time. There is no firm, legal requirement that our lives or property be clearly threatened before such a declaration is made.

This is true because a President, drawing upon a reservoir of strength from his position as commander-in-chief of the armed forces, and as Chief Executive may perceive the need for special action or unusual decisions and thus proclaim a national emergency.

The debate over the actual extent of the President's power in this area has raged for years. The issue has never been settled. Some Presidents have generously interpreted their power to declare national emergencies.

For example, in 1970 President Nixon declared a national emergency in response to a wildcat strike of postal employes in New York and Chicago. He declared that adequate postal service was important to the well being of the nation.

The strike, he argued, could hinder the processing of men into the armed forces and impair tax collections and the distribution of social security and welfare payments. Following his statement, the President activated some Armed Forces Reserve units to begin distributing the mail in New York City.

Actually, these emergency proclamations have little effect standing alone. Their significance lies in the fact that they serve to activate hundreds of laws passed by Congress over the years delegating special authority to the President in times when national emergencies are in effect. These special laws can be triggered simply because a proclamation of emergency, possibly declared years ago, has never been technically revoked.

Congress has shown little reluctance in passing such laws. Time after time, when faced with crisis situations. Congress has handed the President, often with unseemly haste, special powers on a silver platter. While the President should assume leadership in a crisis, the Congress has often failed to consider the long run consequences of its actions.

The lack of careful thoughtful review in granting these special powers was demonstrated in 1933. At that time, Franklin Roosevelt submitted an emergency banking bill to Congress. No member of the House or Senate had copies of the measure. It was passed after 38 minutes of debate. It approved actions the President had already taken.

Unfortunately, this incident is not unique. If we were to add up all Congressional grants of power it would not be an exaggeration to say that the groundwork had been laid for a legal dictatorship.

The need for a serious, careful review of national emergency powers has become increasingly apparent in the last few years. And in 1973 the United States Senate established a Special Committee to study these extraordinary powers. I have been privileged to serve as a member of this Special Committee on the Termination of the National Emergency.

When our Committee first began examining the question of the national emergency, it quickly became apparent that our first task was to identify the existing proclamations of emergency and to catalog all special laws that could be used when emergencies are in effect. No one really knew the full scope and nature of emergency powers.

We learned that the four national emergencies declared in the last 40 years have never been repealed. In 1933 President Roosevelt issued an emergency declaration dealing with the Depression. Harry Truman's emergency proclamation in 1950 provided basis for our involvement in Korea. President Nixon declared an emergency in 1970 to deal with a postal strike. He proclaimed another emergency in 1971 relating to international economic problems.

Then with the help of Air Force computers, the Committee compiled a list of more than 470 federal statutes which can be activated while emergencies are in effect. Some date back to the 1800's. They have never been coordinated. They are not organized in any special manner. All 470 are in effect today.

In addition to these laws, Presidents have issued countless Executive orders, proclamations, and directives. These generally have all the force of law if based upon a specific Congressional delegation of authority. Many of these rulings are not published for review by Congress or the public.

Each of these laws and Executive orders had legitimate objectives at the time of enactment. But over the years they have often been used in ways never imagined by the original authors.

In addition to the rather dramatic possibilities listed in the opening paragraph, there are several actual incidents of Presidents using emergency laws of another era to justify their actions.

For example, in 1917 Congress passed a law prohibiting trading with Germany. section 5(b) of the "Trading With the Enemy Act" gives the President very broad economic powers during the time of war or during any other period of national emergency. This is still "good law" because of the 1950 emergency.

Thus in 1968, President Johnson, wishing to control the foreign investments of U.S. companies to alleviate the balance of payments crisis, issued an Executive order based on powers granted by the "Trading With the Enemy Act of 1917.

In 1950, Congress passed the Defense Production Act giving a President wide-ranging powers to control the production of materials needed for national defense in connection with the Korean War. Its language is broad enough to permit the President to order government possession of a plant which refuses to manufacture a specified kind or quantity of material.

As late as 1966, this Act was used to fill a Department of Defense order for 3 million tropical uniforms for use in Vietnam. Also, in the fourth quarter of 1966, the President relied on the law to require steel producers to set aside six percent of their output for defense. Eighteen percent of copper and thirteen percent of aluminum production also was ordered to be set aside for defense purposes.

Several Presidents have, also, relied upon the Feed and Forage Act of 1861. This bill was passed during the Civil War to give the Army authority to obtain feed and cavalry forage when Congress was not in session.

Today, this act still permits the armed services to use deficiency spending to obtain clothing, subsistence, fuel, quarters, and other supplies. I think these needs should be met. However, the law has also been used to finance American Marines in Lebanon in 1958, to support the Berlin mobilization in 1962, and to maintain troops in Southeast Asia.

I do not suggest that these actions are evil, dictatorial, or even unneeded. But I am persuaded that all the emergency powers, when taken together, give future Presidents an unacceptable range of discretionary power. To say that a contemporary President would not likely abuse emergency power available to him is no guarantee that some future President under unforeseen conditions might not do so.

But of equal or more importance than the possibility of the outright abuse of power is the fact that in exercising emergency authority, even in a legitimate and proper way, the President makes policy decisions which should be properly shared with the Congress.

Because of the existence of these broad emergency powers, even the best intentioned of Presidents is tempted from time to time to take the quick, easy route of issuing Executive orders rather than coming to Congress with a request for statutory authority to deal with the problem at hand.

This is, of course, not always possible. But if we are to maintain a proper balance of power over the long haul, we must continually be on the alert to prevent the unnecessary exercise of Presidential power and the undesirable decline of Congressional authority.

No one suggests that the President should be denied the use of emergency powers. Congress cannot always move with the necessary speed to deal with crisis situations. The real question is not whether the President should have emergency powers, but how extensive they should be and how they should be controlled to assure proper accountability and to prevent possible abuse.

Congressional review is essential to checking the steady growth and accumulation of Presidential emergency powers. We must insist upon our role to oversee the use of these and to terminate them when conditions are proper.

One means of instituting stricter Congressional controls is to limit the length of emergency grants of power.

The British have learned this lesson. During World War II, Parliament granted massive powers to the prime minister and his cabinet. Britain appeared to be a totalitarian state. However, Parliament, also, retained the right to review and terminate the special authority. This grant of powers had to be renewed annually by Parliament. Parliament never lost control of its ultimate right to review and revoke emergency powers.

The U.S. Congress is finally beginning to impose time limits on the granting of special powers. The Economic Stabilization Act, which gave the President the power to invoke wage and price controls, was allowed to lapse on April 30, 1974.

Also, during debate on emergency energy legislation last winter, Senator Church sought to include specific time limits in the grants of power given to the President. Because of the work of our Committee, we were able to convince the Senate to limit the delegation of emergency energy authority to one year.

After long and careful study, the Special Committee to Terminate the National Emergency has now prepared and submitted to the Senate legislation which we believe effectively deals with the question of controlling the use of emergency powers.

Our bill proposes to terminate, after nine months, the effectiveness of all powers given to the President by law as the result of any national emergency currently in effect. The 470 laws, which we mentioned earlier, would in effect be "placed on a shelf for use during future national emergencies."

Outdated or unnecessary laws would be repealed.

Under the bill, the President could in the future, declare a national emergency, But, along with his declaration, he would have to inform Congress precisely which powers "on the shelf" he wishes to use during the emergency. In case of war, the president could use any emergency statute on the books.

The bill also specifies that any declared emergency will be automatically terminated within six months unless extended by Congress. Congress may, also, end the emergency before the six months expire. If the need for special Executive powers continues beyond six months, a President may declare another emergency. These subsequent declarations would also be subject to Congressional approval. During a war, the powers would remain effective until the war was terminated in accordance with constitutional processes.

The bill also requires the President to maintain a file and index of all Executive orders or any other directives he issues. Copies of the orders must be given to Congress. The security of these rulings is protected if they contain confidential information.

This bill is not the perfect answer to all of our questions. A devious President, if he could withstand the political pressure, might wait several days after the expiration of each emergency prior to announcing a new one.

Congress could also refuse, out of spite or for political reasons, to approve legitimate measures needed to protect the Nation. Nevertheless, the bill does impose significant new restrictions on the unfettered use of emergency powers.

This bill, if approved by Congress and signed by the President, will impose a measure of Congressional restraint and oversight in Executive powers which have fast become unmanageable. Its adoption would in no way cripple the President's ability to contend with genuine emergency conditions.

It does represent a step toward reinstituting constitutional government as I believe it was intended to function. It is a major piece of legislation. It should be adopted.

Mr. STEVENSON. Mr. President, two weeks ago, the Constitution provided for an orderly transition in the Presidency.

Today, the Special Committee on National Emergencies and Delegated Emergency Powers on which I am privileged to serve is reporting the National Emergencies Act. That act is intended to assure that in our democratic system of government the President's power does not exceed the power he derives from the Congress and the Constitution.

The National Emergencies Act provides for:

First, the termination of the present status of "national emergency";

Second, a procedure for the declaration of emergencies and their termination;

Third, public disclosure of action taken pursuant to emergency power statutes; and

Fourth, repeal of existing emergency power laws.

Four Presidentially proclaimed states of national emergency are now in effect. Without the consent of Congress, the President can, among other things, seize property, organize and control means of production, assign military forces abroad, declare martial law, restrict travel and control all means of transportation and communication. A President can manage the lives of every American citizen by decree.

Only a few of the President's emergency powers are being used which is evidence in itself that an "emergency" no longer exists.

The National Emergencies Act is the result of more than two years of hearings and research by the Special Committee on National Emergencies and Delegated Emergency Powers.

This act will safeguard our constitutional balance of powers, if enacted. But it cannot be enacted without the approval of the President. The Congress cannot reclaim its constitutional powers without the President's consent.

President Ford has moved brilliantly, but symbolically, to redress the imbalance of power. I commend him, and I urge him and the Congress to now act by supporting this legislation.

Mr. HANSEN. Mr. President, I would like to take this opportunity to direct my remarks to a bill which the Special Committee on National Emergencies and Delegated Powers of which I am a member, recently reported. It is my understanding this bill will be referred to the Committee on Government Operations.

It is my feeling this bill offers a correct approach to restricting the Executive branch's power to declare a national emergency by giving it sufficient power to declare a national emergency when the "preservation, protection, and defense of the Constitution, and . . . the common defense and safety of the territory and people of the United States" so require it. Few would argue the need under these circumstances for immediate action, which many times Congress is unable to provide due to the majority consensus required.

The source of national emergency power is derived mainly from delegation of Congressional power to "make all laws." There has not been an usurpation by the Executive of Congress' power but rather there has been an authorized delegation. The appearance of excess and uncontrolled power of the President to declare a national emergency through an Executive order has stemmed mainly from failure to publish in the *Federal Register* documents which are in fact Executive orders and proclamations but which have not been formally prepared.

Congress has failed to specify substantive standards, which would require the recordation of all documents in the above class. The statutes from which the power to declare a national emergency are incorporated have in many cases been obscured and the President has been able to draw this source of power from laws which were generally unknown. As a result of the Committee staff's work, approximately 470 statutes have been located which contain authority for the President from Congress to declare a national emergency. Under the bill, 470 statutes would remain dormant until the President specified which he wishes to become active at the time when emergency conditions arise. If Congress takes no action on the President's request within six months, the national emergency will lapse. Congress could extend the emergency past six months if desired. The bill would also end the four existing states of national emergency and repeal laws that both the Executive and Congress believe to be obsolete.

It is my feeling this bill has updated and coordinated the existing statutory authority for declaring a national emergency. It has set reasonable restrictions upon the use of this authority without restricting it beyond practicability. Congress has reclaimed its right to make all the laws by restricting the Executive's power to declare a national emergency. Yet the Executive still retains the right under the 470 statutes to declare a national emergency in the face of an emergency.

Mr. Pell. Mr. President, the National Emergencies Act of 1974, introducd today by Senators Church and Mathias and cosponsored by all the members of the Special Committee on National Emergency Powers, including myself, is an unprecedented and crucial piece of legislation.

This legislation is the product of 20 months of study and work by the Special Committee, particularly the cochairman and the staff.

It is ironic, Mr. President, that the Special Committee was examining the question of national emergencies and emergency powers during the same period in which the American people were becoming acutely concerned about the extent and use of Presidential power in our supposedly balanced system of National Government.

In view of the continuing national reexamination of the proper roles of the Executive and Legislative branches of that Government, it is particularly appropriate that the Special Committee should come forward with this legislation today.

The National Emergencies Act of 1974 simply but effectively fulfills the mandate of the Special Committee when it was created in the 92d Congress. It provides for the termination of the four states of national emergency which continue in effect in our country.

In place of those four states of national emergency, the legislation would establish what I believe to be an effective and responsible mechanism for dealing with future national emergencies.

Under the system proposed in this legislation, the Chief Executive would have available to him the power to declare a national emergency and to call into effect those powers which are necessary to deal quickly and effectively with the emergency situation.

But, unlike past practice, the Congress would reserve its proper role of examining and judging the rectitude of the Chief Executive's actions. There is also the clear recognition that such emergencies are temporary in nature and that the states of emergency should not continue beyond the end of the emergency situation.

Mr. President, I believe that action by the Congress to correct the inaction of the last 41 years, regarding emergencies and emergency powers, is long overdue. Senators Church and Mathias are to be commended for bringing this problem to the fore and for the thoroughness of their study of the many facets of these questions.

I hope that speedy action can occur on this legislation both in the Senate and in the House so that we can restore—at least in this one crucial area—the balance that the framers of the Constitution so wisely constructed.

The Presiding Officer. The Senator from Idaho.

Mr. Church. Mr. President, I simply want to join with the distinguished Senator from Maryland (Mr. Mathias) in expressing my own appreciation for the attitude shown by President Ford this morning. I think his recognition of the need to end emergency government and to restore normal Government is not only very encouraging to those of us who have worked long and hard on this Committee, but it makes this day a promising one for the Republic.

Mr. President, I would like to ask unanimous consent that the name of the distinguished Senator from Florida (Mr. Chiles) be added as a cosponsor to the bill we have introduced today.

The Presiding Officer (Mr. Helms). Without objection, it is so ordered.

Mr. Church. Mr. President, I now suggest the absence of a quorum.

The Presiding Officer. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. Chiles. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered.

TEXT OF S. 3957, 93RD CONGRESS

A BILL To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

TERMINATING POWERS AND AUTHORITIES

SEC. 101 (a) All powers and authorities conferred by law upon the President, any other officer or employee of the Federal Government, or upon any department, agency, independent establishment, or any other body of the Federal Government, and all powers and authorities conferred by any Executive order pursuant to law as a result of the existence of any national emergency in effect immediately prior to the two hundred and seventy-first day after the date of enactment of this Act, are terminated on such two hundred and seventy-first day.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President pursuant to a statute authorizing him to declare a national emergency.

TITLE II—FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) In the event the President finds that the proclamation of a national emergency is essential to the preservation, protection, and defense of the Constitution, and is essential to the common defense, safety, or well-being of the territory and people of the United States, the President is authorized to proclaim the existence of a national emergency. Such proclamation shall thereupon be made public, and shall be published immediately in the *Federal Register*.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect with respect to national emergency (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

TITLE III—DECLARATIONS OF WAR BY CONGRESS

SEC. 301. Whenever Congress declares war, any provisions of law conferring powers and authorities to be exercised during time of war or a national emergency shall be effective from the date of such declaration and remain in effect only in accordance with the provision of Title IV of this Act.

TITLE IV—FUTURE NATIONAL EMERGENCIES

EXERCISING EMERGENCY POWERS AND AUTHORITIES

SEC. 401. (a) When the President declares a national emergency, or Congress declares war, any provision of law conferring powers and authorities to be exercised during such a national emergency or during a war declared by the Congress shall be effective and remain in effect with respect to such emergency or war only in accordance with this Act.

(b) When the President declares a national emergency, no powers made available by statute for use in the event of an emergency shall become operative unless and until the President specifies by Executive order the specific provisions of law under which he proposes that he, or other officers of the Executive branch, will act. Such specification may be made either in the original declaration of a national emergency, or by subsequent order, but no power granted in the event of the declaration of a national emergency shall be available unless or until it has been so specified by the President. All such specifications shall be published immediately in the *Federal Register*, and a copy of any declaration of national emergency, and of such specifications, shall be transmitted immediately to Congress.

LIMITATIONS ON NATIONAL EMERGENCIES DECLARED BY PRESIDENT

SEC. 402. Any national emergency declared by the President in accordance with this title shall terminate at the end of the one hundred and eightieth day after the date the national emergency was declared, and any of the provisions of law referred to in section 401(a) of this Act shall not be effective after the end of such one hundred and eightieth day unless Congress by concurrent resolution—

(1) terminates such emergency on an earlier date; or

(2) continues such emergency to a day specified in the concurrent resolution, beyond the end of such one hundred and eightieth day.

Any national emergency declared by the President shall then be terminated on the date specified in any such concurrent resolution referred to in clauses (1) and (2) of this section, and any such provisions of law shall not be effective after such specified date with respect to that emergency.

TERMINATING AND CONTINUING NATIONAL EMERGENCIES AND WARS

SEC. 403. (a) In no event shall any provision of law referred to in section 401 (a) of this Act remain in effect beyond the end of the one hundred and eightieth day following the date of the declaration of the emergency or war unless, in the case of a declaration of war by Congress, if such declared war has not been terminated in accordance with constitutional processes.

(b) The provisions of sections 401 and 402 of this Act and subsection (a) of this section shall apply to any subsequent declaration of a national emergency or war made with respect to the same emergency or war under subsection (a) of this section.

TITLE V—MISCELLANEOUS

ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 501. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file, and an index thereof, of all Executive orders by the President, including all instances of the exercise by the President of any power conferred on him by statutes and the Constitution; all rules and regulations, by whatever name called, promulgated by any Executive department, administration, independent establishment, board, commission, official, group of officials, or other rulemaking authority; and all other rules, regulations, orders, by whatever name called, made directly or indirectly under the expressed or implied authority of the Constitution or any Act of Congress with respect to the declarations of national emergency or war. The President shall transmit to the House of Representatives and the Senate and to the appropriate committees of the Congress the texts of each order, rule, or regulation, by whatever name called, promulgated by any Executive department, administration, independent establishment, board, commission, official, group of officials, or other rulemaking authority; and all other orders, rules, and regulations, by whatever name called, made directly or indirectly under expressed or implied authority of the Constitution or any Act of Congress with respect to the declaration of national emergency or war, as soon as practicable after that order, by whatever name called, has been issued.

(b) Any such order, rule, or regulation which conforms with procedures established by law, shall be transmitted to the House of Representatives and the Senate and to the appropriate committees of Congress under means to assure its proper confidentiality.

TITLE VI—REPEAL OF CERTAIN EMERGENCY POWER STATUTES

Sec. 601. Except with respect to the rights and duties that matured, penalties that were incurred, and proceedings that were begun, prior to the date of enactment of this Act, the following provisions of law are repealed:

(7 U.S.C. 1741)
(7 U.S.C. 1742)
(7 U.S.C. 1743)
(7 U.S.C. 1744)
(7 U.S.C. 1745)
(7 U.S.C. 1746)
(7 U.S.C. 1747)
(8 U.S.C. 1481(a)(10))
(10 U.S.C. 2667(b)(4))
(10 U.S.C. 4025)
(10 U.S.C. 9025)
(12 U.S.C. 95)
(12 U.S.C. 95(a))
(12 U.S.C. 249)
(12 U.S.C. 1703)
(12 U.S.C. 1705)
(12 U.S.C. 1748b(a))
(16 U.S.C. 831d(m))
(18 U.S.C. 1383)
(26 U.S.C. 168)
(41 U.S.C. 101)
(41 U.S.C. 102)
(41 U.S.C. 103)
(41 U.S.C. 104)
(41 U.S.C. 105)
(41 U.S.C. 106)
(41 U.S.C. 107)
(41 U.S.C. 108)
(41 U.S.C. 109)
(41 U.S.C. 110)
(41 U.S.C. 111)
(41 U.S.C. 112)
(41 U.S.C. 113)
(41 U.S.C. 114)
(41 U.S.C. 115)
(41 U.S.C. 116)
(41 U.S.C. 117)
(41 U.S.C. 118)
(41 U.S.C. 119)
(41 U.S.C. 120)
(41 U.S.C. 121)
(41 U.S.C. 122)
(41 U.S.C. 123)
(41 U.S.C. 124)
(41 U.S.C. 125)
(42 U.S.C. 211b)
(42 U.S.C. 1592)
(50 U.S.C. 9(e))
(50 U.S.C. App. 1742).

Calendar No. 1136

93d Congress } SENATE { Report
2d Session } { No. 93–1193

NATIONAL EMERGENCIES ACT

September 30, 1974.—Ordered to be printed

Mr. Ervin, from the Committee on Government Operations,
submitted the following

REPORT

[To accompany S. 3957]

The Committee on Government Operations, to which was referred the bill (S. 3957) to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

Purpose

The purpose of S. 3957 is to end the four states of national emergency currently in force and to provide for a procedure for meeting future emergencies which will assure the operation of Constitutional processes.

In order to carry out this purpose the National Emergencies Act would:

(1) Terminate the four states of national emergency now in force;

(2) Provide for automatic termination of future national emergencies after six months unless extended by Congressional action;

(3) Provide for Congressional oversight of and accountability for actions taken by the Executive in the exercise of delegated emergency powers; and

(4) Repeal specific obsolete emergency powers statutes.

Four states of national emergency are now in force. The national emergency declared by President Roosevelt on March 6, 1933, to meet the crisis of the depression has not been formally terminated.

The national emergency declared on December 16, 1950, by President Truman to mobilize the country for the Korean War, is still in effect.

The national emergency declared by President Nixon on March 23, 1970, to cope with the Post Office strike, has not been terminated.

The national emergency declared by President Nixon on August 15, 1971, to implement currency restrictions and to enforce controls on foreign trade remains in effect.

The termination of the existing states of emergency would take effect nine months after the date of enactment of this bill. This nine-month grace period is provided to enable the Executive branch to make legislative proposals for the small body of "emergency" powers that have become everyday functions of the government, with enough time to obtain enactment through normal legislative processes.

The second section of the bill provides for regular and consistent procedures by which emergencies can be met in the future. The definition of an emergency has been deliberately cast in broad terms that makes it clear that a proclamation of a state of national emergency requires a grave national crisis. In the event of such a crisis, the President, by proclamation, would declare the existence of a national emergency. The proclamation of the President would be immediately made public and published in the *Federal Register*. In his proclamation the President would specify his reasons for declaring the emergency and the statutory powers he intended to invoke. The delegation of authority would take effect immediately upon public notification by the President. Any time within the next six months, the Congress could affirm or reject by Concurrent Resolution the President's use of these powers. If the Congress did not act, the declared emergency would lapse after six months. Proclaimed states of national emergency could be extended for six-month periods but each extension would require an affirmative act by the Congress and be limited to six months.

The third section of the bill would require an accounting of all significant actions taken by the President pursuant to emergency powers invoked during a declared state of national emergency. This section is intended to provide the means for effective Congressional oversight of the executive branch's use of statutory delegated emergency powers.

The final section of the bill is a list of statutes to be repealed. The Standing Committees and the Executive branch departments and agencies have agreed that these statutes are obsolete and should be stricken from the books.

History of Legislation

The National Emergencies Act was introduced by the Senate Special Committee on National Emergencies and Delegated Emergency Powers on August 22, 1974. The Act was sponsored by Senators Church, Mathias, Hart, Pell, Stevenson, Case, Pearson, Hansen, Ervin, Chiles, Williams, Muskie, Javits, Ribicoff, and Roth.

The National Emergencies Act is the result of almost two years of hearings, investigations and studies conducted by the bipartisan special committee under the co-chairmanship of Senator Church and Senator Mathias and whose other members are Senators Hart, Case, Pell, Pearson, Stevenson and Hansen. The Special Committee had its origins in the final months of the 92nd Congress, when considerable interest was expressed within the Senate in determining with precision what emergency powers were available to the Executive. With the opening of the 93rd Congress, there was established, on January 6, 1973, a Special Committee on the Termination of the National Emergency. The mandate of the Special Committee, as expressed in its authorizing resolution (S. Res. 9), was "to conduct a study and investigation with respect to the matter of terminating the national emergency proclaimed by the President of the United States on December 16, 1950, as announced in Presidental Proclamation Numbered 2914, dated the same date."

It was soon discovered that more than one proclamation of national emergency was in effect; in fact, there are four such instruments, issued in 1933, 1950, 1970 and 1971, now in force. After examining the U.S. Code and uncodified statutory emergency powers, the Special Committee identified over 470 provisions of Federal law in effect which delegate extraordinary authority in time of national emergency to the Executive.*

The Special Committee discovered that there was no consistent procedure for declaring, administering or terminating states of national emergencies. The Special Committee, therefore, worked on two main tasks. First, to explore how existing states of national emergency could be terminated with the least adverse effects. There were three possible approaches: (a) outright repeal of all emergency statutes, (b) relegating all emergency provisions to a state of domancy to be used in future emergencies, or (c) maintaining emergency provisions in the United States Code but for use only in states of emergency declared in accordance with regular and consistent procedures which would provide for termination and oversight.

The second task was to explore the possibility of establishing a procedure for declaring states of national emergency. The procedure would require accountability for actions taken by the Executive pursuant to delegated emergency authorities in order to permit the Congress to effectively exercise its oversight responsibilities.

Concurrent with the historical research undertaken by the staff of the Special Committee, the Library of Congress and distinguished consultants, hearings were held on the history of emergency rule in the United States and constitutional problems created by such rule. The dates of Committee hearings were April 11 and 12, July 24 and November 28, 1973.

Professor Robert S. Rankin, Emeritus, of Duke University, Professor Cornelius P. Cotter of the University of Wisconsin, and Professor J. Malcolm Smith of California State University, all renowned scholars of the subject of emergency powers, testified in hearings held by the Special Committee on April 11, 1973. Since that time they have continued to advise the Committee on particular constitutional and legal questions concerned with emergency powers.

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*See U.S. Congress, Senate—Special Committee on the Termination of the National Emergency; Emergency Powers Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency, Washington, U.S. Govt. Print. Off., 1973 (93d Congress, 1st session, Senate Report No. 549) 607 pages; see also, Executive Orders in Times of War and National Emergency, Washington, U.S. Govt. Print. Off., 1974 (93d Congress, 2d session), 283 pages.

The Dean of the Georgetown University Law Center, Professor Adrian S. Fisher, testified on the circumstances surrounding the declaration of the 1950 national emergency. His testimony was particularly useful because Professor Fisher was an advisor to Harry Truman at the time the emergency was declared. Dr. Gerhard Casper, Professor of Law and Political Science at the University of Chicago, testified on the constitutional questions involved in Executive use of emergency powers, comparing the experiences of other democratic states, particularly those of the Weimar Republic.

The Special Committee has had the benefit of the full cooperation and assistance of three successive Attorneys General: Kleindienst, Richardson and Saxbe, respectively, as well as three Secretaries of Defense and the Office of Management and Budget.

In addition, the Special Committee called upon former Attorney General of the United States and Associate Justice of the U.S. Supreme Court (retired) Tom C. Clark, former Attorney General Nicholas DeB. Katzenbach, and former Attorney General Ramsey Clark for their perspectives on emergency powers from the viewpoint of the Justice Department and the Supreme Court. Just prior to his death, the late Chief Justice of the Supreme Court Earl Warren informally provided to the Committee counsel based upon his long experience and life in the law. As reported by Senator Mathias in a speech to the Senate on August 22, 1974:

> Chief Justice Warren said that while the Constitution provides that only Congress can make the law, the legislature has the obligation through enacting statutes to provide firm policy guidelines for the Executive branch. The former Chief Justice agreed with Justice Jackson's view that where there are statutory guidelines, a President is obliged to follow the precepts contained in the laws passed by the Congress. Inherent powers problems arise and the other branches act, he said, largely when Congress fails to act definitely, when it fails to make needed laws and when there is a necessity for legislative action and Congress fails to meet the challenge.
>
> We then discussed the outline and the constitutional concept that lay behind the legislative proposal to meet future national emergencies now before the Senate. Chief Justice Warren thought it was, in principle, a sound solution to what he recognized as a serious threat to constitutional government.

Following his resignation as Attorney General of the United States, Elliot Richardson presented his views to the Special Committee as did former Solicitor General Erwin N. Griswold.

On the basis of these hearings, contained in three volumes issued as committee reports, consultations with every department and agency of the Executive branch, the Federal Register and consultation with many distinguished legal scholars in the Executive branch, in the Library of Congress and in numerous universities and law schools, the Special Committee drew up legislation making use of many of the suggestions of these persons and the witnesses who had appeared before Committee hearings. The Special Committee took as a basic guideline the opinion of the Supreme Court in the Youngstown Steel Case, particularly that portion of the concurring opinion given by Justice Jackson:

> The appeal, however, that we declare the existence of inherent powers *ex necessitate* to meet an emergency asks us to do what many think would be wise, although it is something the forefathers omitted. They knew what emergencies were, knew the pressures they engendered for authoritative action, knew, too, how they afford a ready pretext for usurpation. We may also suspect that they suspected that emergency powers would tend to kindle emergencies. Aside from suspension of the privilege of the writ of habeas corpus in time of rebellion or invasion, when the public safety may require it, they made no express provision for exercise of extraordinary authority because of a crisis. I do not think we rightfully may so amend their work, and, if we could, I am not convinced it would be wise to do so, although many modern nations have forthrightly recognized that war and economic crises may upset the normal balance between liberty and authority. Their experience with emergency powers may not be irrelevant to the argument here that we should say that the Executive, of his own volition, can invest himself with undefined emergency powers.
>
> Germany, after the First World War, framed the Weimar Constitution, designed to secure her liberties in the Western tradition. However, the President of the Republic, without concurrence of the Reichstag, was empowered temporarily to suspend any or all individual rights if public safety and order were seriously disturbed or endangered. This proved a temptation to every government, whatever its shade of opinion, and in 13 years suspension of rights was invoked on more than 250 occasions. Finally, Hitler persuaded President von Hindenburg to suspend all such rights, and they were never restored.
>
> The French Republic provided for a very different kind of emergency government known as the "state of seige." It differed from the German emergency dictatorship particularly in that emergency powers could not be assumed at will by the Executive but could only be granted as a parliamentary measure. And it did not, as in Germany, result in a suspension or abrogation of law but was a legal institution governed by special legal rules and terminable by parliamentary authority.
>
> Great Britain also has fought both World Wars under a sort of temporary dictatorship created by legislation. As Parliament is not bound by written constitutional limitations, it established a crisis government simply by delegation to its Ministers of a larger measure than usual of its own unlimited power, which is exercised under its supervision by Ministers whom it may dismiss. This has been called the "high-water mark in the voluntary surrender of liberty," but, as Churchill put it, "Parliament stands custodian of these surrendered

liberties, and its most sacred duty will be to restore them in their fullness when victory has crowned our exertions and our perseverance." Thus, parliamentary controls made emergency powers compatible with freedom.

This contemporary foreign experience may be inconclusive as to the wisdom of lodging emergency powers somewhere in a modern government. But it suggests that emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the "inherent powers" formula. Nothing in my experience convinces me that such risks are warranted by any real necessity, although such powers would, of course, be an Executive convenience.

In the practical working of our Government we already have evolved a technique within the framework of the Constitution by which normal Executive powers may be considerably expanded to meet an emergency. Congress may and has granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in war or upon proclamation of a national emergency. In 1939, upon congressional request, the Attorney General listed ninety-nine such separate statutory grants by Congress of emergency or wartime Executive powers. They were invoked from time to time as need appeared. Under this procedure we retain Government by law—special, temporary law, perhaps, but law nonetheless. The public may know the extent and limitations of the powers that can be asserted, and persons affected may be informed from the statute of their rights and duties.

In view of the ease, expedition and safety with which Congress can grant and has granted large emergency powers, certainly ample to embrace this crisis, I am quite unimpressed with the argument that we should affirm possession of them without statute. Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction.

* * * * *

But I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. A crisis that challenges the President equally, or perhaps primarily, challenges Congress. If not good law, there was worldly wisdom in the maxim attributed to Napoleon that "The tools belong to the man who can use them." We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.

The essence of our free Government is "leave to live by no man's leave, underneath the law"—to be governed by those impersonal forces which we call law. Our Government is fashioned to fulfill this concept so far as humanly possible.

> The Executive, except for recommendation and veto, has no legislative power. The Executive action we have here originates in the individual will of the President and represents an exercise of authority without law. No one, perhaps not even the President, knows the limits of the power he may seek to exert in this instance and the parties affected cannot learn the limit of their rights. We do not know today what powers over labor or property would be claimed to flow from Government possession if we should legalize it, what rights to compensation would be claimed or recognized, or on what contingency it would end. With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.
>
> Such institutions may be destined to pass away. But it is the duty of the Court to be last, not first, to give them up.

The research required to bring together the statutes and Executive orders concerned with war and national emergency could not have been achieved without the help of all the Executive departments and agencies. The Air Force gave the Special Committee access to its LITE computer system which included the U.S. Code among its tapes. This made it possible to begin to identify the statutes triggered by a state of national emergency. In addition to the computer search, the Special Committee made a hand-search of all 87 volumes of the Statutes-at-Large.

The result of the search of the U.S. Code and the Statutes-at-Large and of the collection of proclamations and Executive orders found at the Library of Congress and at the *Federal Register*, were two compilations, the first entitled "Emergency Powers Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency," and the second, "Executive Orders in Times of War and National Emergency." In addition, "A Brief History of Emergency Powers in the United States," prepared by the Library of Congress was just issued as a committee print. A handbook containing the evaluations of all emergency statutes made by Standing Committees of the Senate and by Executive branch departments and agencies is now in the process of being printed.

Section-by-Section Analysis

S. 3957, the National Emergencies Act, contains six sections. They provide for the termination of existing states of national emergencies to take effect nine months after date of enactment. A procedure for meeting future emergencies is set forth including provisions for termination, extension and accountability for actions taken. The final section lists existing but obsolete statutes to be repealed upon enactment.

SECTION 101

Subsection (a) states that all existing national emergencies are to be terminated and all powers and authorities conferred by statutes dependent upon a declared state of national emergency are terminated two hundred and seventy one days (nine months) after the enactment of the National Emergencies Act.

Subsection (b) defines the term "any national emergency in effect" as any general declaration of emergency made by the President pursuant to a statute authorizing him to declare a national emergency.

SECTION 201

Subsection (a) provides that the President may declare a proclamation of national emergency when it is "essential to the preservation, protection, and defense of the Constitution, and is essential to the common defense, safety, or well-being of the territory and people of the United States." Any such proclamation must be made public and published in the *Federal Register.*

Subsection (b) provides that any statute that becomes effective in time of a declared national emergency, shall only be lawful if the provisions of this Act are complied with. No future act will supercede this Act unless it does so in specific terms, and declares that the purpose of the new law is to supercede either particular parts or the whole of this Act.

SECTION 301

When Congress declares war, any statutes that take effect in times of a declared national emergency are also in effect. These emergency powers remain in effect in conformity with procedures provided by this Act.

SECTION 401

Subsection (a) provides that only declared states of national emergency that comply with this Act shall have legal authority and effect.

Subsection (b) provides that the President must specify the emergency powers statutes he is making use of. The powers specified in the declaration must be published in the *Federal Register*, and the declaration, as well as the specified statutes must be transmitted immediately to Congress.

SECTION 402

Any future national emergency declared by the President shall automatically terminate after six months, unless the emergency is terminated earlier, or the Congress by concurrent resolution specifies a day beyond the six months when the emergency will end.

SECTION 403

Subsection (a) provides that in the case of a war declared by Congress statutory emergency powers specified by the President for use in a proclamation terminate at the end of 180 days unless extended in accordance with the procedures provided by this Act.

Subsection (b) provides that the procedures for exercising emergency powers and authorities contained in sections 401 and 402 of this Act will apply to any subsequent declarations of national emergency affecting the same war or national emergency.

SECTION 501

Subsection (a) provides for a reporting by the Executive branch whereby each emergency order or rule promulgated under the authority of the national emergency and its use will be recorded and reported to Congress.

Subsection (b) provides that where required, proper confidentiality will be maintained for reports transmitted to the Congress.

SECTION 601

Repeals certain statutes that are obsolete.

ESTIMATED COST OF LEGISLATION

It is not expected that enactment of this legislation would require any significant additional expenditures.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no changes is proposed is shown in roman):

TITLE 7.—AGRICULTURE, UNITED STATES CODE

* * * * * * *

[Chapter 42.—AGRICULTURAL COMMODITY SET-ASIDE

[§ 1741. Maximum and minimum quantities for set-aside; definition.

[The Commodity Credit Corporation shall, as rapidly as the Secretary of Agriculture shall determine to be practicable, set aside within its inventories not more than the following maximum quantities and not less than the following minimum quantities of agricultural commodities or products thereof heretofore or hereafter acquired by it from 1954 and prior years' crops and production in connection with its price support operations:

[

Commodity	Maximum quantity	Minimum quantity
Wheat (bushels)	500, 000, 000	400, 000, 000
Upland cotton (bales)	4, 000, 000	3, 000, 000
Cottonseed oil (pounds)	500, 000, 000	0
Butter (pounds)	200, 000, 000	0
Nonfat dry milk solids (pounds)	300, 000, 000	0
Cheese (pounds)	150, 000, 000	0

[Such quantities shall be known as the "commodity set-aside."

[§ 1742. Determination of commodity value for set-aside.

[Quantities of commodities shall not be included in the commodity set-aside which have an aggregate value in excess of $2,500,000,000. The value of the commodities placed in the commodity set-aside, for the purpose of this section, shall be the Corporation's investment in such commodities as of the date they are included in the commodity set-aside, as determined by the Secretary.

[§ 1743. Reduction of set-aside.

[(a) Such commodity set-aside shall be reduced by disposals made in accordance with the directions of the President as follows:

[(1) Donation, sale, or other disposition for disaster or other relief purposes outside the United States pursuant to and subject to the limitations of subchapter III of chapter 41 of this title;

[(2) Sale or barter (including barter for strategic materials) to develop new or expanded markets for American agricultural commodities, including but not limited to disposition pursuant to and subject to the limitations of subchapter II of chapter 41 of this title;

[(3) Donation to school-lunch programs;

[(4) Transfer to the national stockpile established pursuant to sections 98 to 98h of Title 50, without reimbursement from funds appropriated for the purposes of said sections;

[(5) Donation, sale, or other disposition for research, experimental, or educational purposes;

[(6) Donation, sale, or other disposition for disaster relief purposes in the United States or to meet any national emergency declared by the President; and

[(7) Sale for unrestricted use to meet a need for increased supplies at not less than 105 per centum of the parity price in the case of agricultural commodities and a price reflecting 105 per centum of the parity price of the agricultural commodity in the case of products of agricultural commodities.

[The President shall prescribe such terms and conditions for the disposal of commodities in the commodity set-aside as he determines will provide adequate safeguards against interference with normal marketings of the supplies of such commodities outside the commodity set-aside. Strategic materials acquired by the Commodity Credit Corporation under paragraph (2) of this subsection shall be transferred to the national stockpile established pursuant to sections 98 to 98h of Title 50, and the Commodity Credit Corporation shall be reimbursed for the value of the commodities bartered for such strategic materials from funds appropriated pursuant to section 98g of Title 50. For the purpose of such reimbursement, the value of any commodity so bartered shall be the lower of the domestic market price or the Commodity Credit Corporation's investment therein as of the date of such barter, as determined by the Secretary of Agriculture.

[(b) The quantity of any commodity in the commodity set-aside shall be reduced to the extent that the Commodity Credit Corporation inventory of such commodity is reduced, by natural or other cause beyond the control of the Corporation, below the quantity then charged to the commodity set-aside.

[§ 1744. Sale of commodities in set-aside; exemption from pricing limitations.

[(a) The Corporation shall have authority to sell, without regard to section 1743(a)(7) of this title, any commodity covered by the commodity set-aside for the purpose of rotating stocks or consolidating inventories, any such sale to be offset by purchase of the same commodity in a substantially equivalent quantity or of a substantially equivalent value.

[(b) Dispositions pursuant to this chapter shall not be subject to the pricing limitations of section 1427 of this title.

[§ 1745. Computation of carry-over.

[The quantity of any commodity in the commodity set-aside or transferred from the set-aside to the national stockpile established pursuant to sections 98 to 98h of Title 50 shall be excluded from the computation of "carryover" for the purpose of determining the price support level for such commodity under the Agricultural Act of 1949, as amended, and related legislation, but shall be included in the computation of total supplies for purposes of acreage allotments and marketing quotas under the Agricultural Adjustment Act of 1938, as amended, and related legislation. Until such time as the commodity set-aside has been completed, such quantity of the commodity as the Secretary shall determine between the maximum and minimum quantities specified in section 1741 of this title shall be excluded from the computations of "carryover" for the purpose of determining the price support level, but shall be included in the computation of total supplies for purposes of acreage allotments and marketing quotas, for the 1955 crop of the commodity, notwithstanding that the quantity so excluded may not have been acquired by the Corporation and included in the commodity set-aside.

[§ 1746. Records and accounts.

[The Commodity Credit Corporation shall keep such records and accounts as may be necessary to show, for each commodity set-aside, the initial and current composition, value (in accordance with section 1742 of this title), current investment, quantity disposed of, method of disposition, and amounts received on disposition.

[§ 1747. Appropriations; determination of value of transferred commodity.

[In order to make payment to the Commodity Credit Corporation for any commodities transferred to the national stockpile pursuant to section 1743(a)(4) of this title, there are authorized to be appropriated amounts equal to the value of any commodities so transferred. The value of any commodity so transferred, for the purpose of this section, shall be the lower of the domestic market price or the Commodity Credit Corporation's investment therein as of the date of transfer to the stockpile, as determined by the Secretary of Agriculture.]

TITLE 8.—ALIENS AND NATIONALITY, UNITED STATES CODE

* * * * * * *

Part III.—Loss of Nationality

§ 1481. Loss of nationality by native-born or naturalized citizen; voluntary action; burden of proof; presumptions.

(a) From and after the effective date of this chapter a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

(1) * * *.

* * * * * * *

[(10) departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and sevice in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.]

TITLE 10.—ARMED FORCES, UNITED STATES CODE

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Chapter 159.—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

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§ 2667. Leases: non-excess property.

(a) * * *.

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(b) A lease under subsection (a)—

(1) * * *.

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[(4) must be revocable by the Secretary during a national emergency declared by the President; and]

* * * * * * *

Chapter 873.—CIVILIAN EMPLOYEES

* * * * * * *

[§ 4025. Production of supplies and munitions: hours and pay of laborers and mechanics.

[During a national emergency declared by the President, the regular working hours of laborers and mechanics of the Department of the Army producing military supplies or munitions are 8 hours a day or 40 hours a week. However, under regulations prescribed by the Secretary of the Army these hours may be exceeded. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40.]

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Chapter 873.—CIVILIAN EMPLOYEES

* * * * * * *

[§ 9025. Production of supplies and munitions: hours and pay of laborers and mechanics.

[During a national emergency declared by the President, the regular working hours of laborers and mechanics of the Department of the Air Force producing military supplies or munitions are 8 hours a day or 40 hours a week. However, under regulations prescribed by the Secretary of the Air Force these hours may be exceeded. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40.]

TITLE 12.—BANKS AND BANKING, UNITED STATES CODE

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Chapter 2.—NATIONAL BANKS

ORGANIZATION AND GENERAL PROVISIONS

* * * * * * *

[§ 95. Emergency limitations and restrictions on business of members of Federal Reserve System.

[In order to provide for the safer and more effective operation of the national banking system and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the national banking system and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations, and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer, or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

[§ 95a. Regulation of transactions in foreign exchange of gold and silver; property transfers; vested interests, enforcement and penalties.

[(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

[(A) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

[(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this section either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this section, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this section.

[(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this section or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this section, or any rule, regulation, instruction, or direction issued hereunder.

[(3) As used in this section, the term "United States" means the United States and any place subject to the jurisdiction thereof: *Provided, however*, That the foregoing shall not be construed as a limitation upon the power of the President, which is conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this section, for any or all of the terms used in this section. Whoever willfully violates any of the provisions of this section or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this section, the term "person" means an individual, partnership, association, or corporation.]

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Chapter 3.—FEDERAL RESERVE SYSTEM

DEFINITIONS, ORGANIZATION, AND GENERAL PROVISIONS AFFECTING SYSTEM

* * * * * * *

[§ 249. Regulation of consumer credit.

[After November 1, 1947, the Board of Governors of the Federal Reserve System shall not exercise consumer credit controls pursuant to Executive Order Numbered 8843, and no such consumer credit controls shall be exercised after such date except during the time of war beginning after August 8, 1947, or any national emergency declared by the President after August 8, 1947.]

* * * * * * *

Chapter 13.—NATIONAL HOUSING

[§ 1703. Insurance of financial institutions.

[(a) The Secretary is authorized and empowered upon such terms and conditions as he may prescribe, to insure banks, trust companies, personal finance companies, mortgage companies, building and loan associations, installment lending companies and other such financial institutions, which the Secretary finds to be qualified by experience or facilities and approves as eligible for credit insurance, against losses which they may sustain as a result of loans and advances of credit, and purchases of obligations representing loans and advances of credit, made by them on and after July 1, 1939, and prior to June 30, 1973, for the purpose of (i) financing alterations, repairs, and improvements upon or in connection with existing structures, and the building of new structures, upon urban, suburban, or rural real property (including the restoration, rehabilitation, rebuilding, and replacement of such improvements which have been damaged or destroyed by earthquake, conflagration, tornado, hurricane, cyclone, flood, or other catastrophe), by the owners thereof or by lessees of such real property under a lease expiring not less than six months after the maturity of the loan or advance of credit; and for the purpose of (ii) financing the purchase of a mobile home to be used by the owner as his principal residence. In no case shall the insurance granted by the Secretary under this section to any such financial institution on loans, advances of credit, and purchases made by such financial institution for such purposes on and after July 1, 1939, exceed 10 per centum of the total amount of such loans, advances of credit, and purchases:

Provided, That with respect to any loan, advance of credit, or purchase made after the effective date of the Housing Act of 1954, the amount of any claim for loss on any such individual loan, advance of credit or purchase paid by the Secretary under the provisions of this section to a lending institution shall not exceed 90 per centum of such loss.]

* * * * * * *

[§ 1705. Allocation of funds.

[For the purposes of carrying out the provisions of this subchapter and subchapters II and III of this chapter the President, in his discretion, is authorized to provide such funds or any portion thereof by allotment to the Secretary from any funds that are available, or may hereafter be made available, to the President for emergency purposes.]

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[§ 1748b. Insurance of mortgages.

[(a) Aggregate amount of insurance; termination date.

[In order to assist in relieving the acute shortage and urgent need for family housing which now exists at or in areas adjacent to military installations because of uncertainty as to the permanency of such installations and to increase the supply of necessary family housing accommodations for personnel at such installations, the Secretary is authorized, upon application of the mortgagee, to insure mortgages (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided, and, upon such terms as the Secretary may prescribe, to make commitments for so insuring such mortgages prior to the date of their execution or disbursement thereon: *Provided*, That the aggregate amount of principal obligations of all mortgages insured under this subchapter (except mortgages insured pursuant to the provisions of this subchapter in effect prior to August 11, 1955) shall not exceed $2,300,000,000: *And provided further*, That the limitation in section 1715h of this title shall not apply to this subchapter: *And provided further*, That no more mortgages shall be insured under this section after October 1, 1962, except pursuant to a commitment to insure before such date, and not more than twenty-eight thousand family housing units shall be contracted for after June 30, 1959, pursuant to any mortgage insured under this section after such date.]

TITLE 16.—CONSERVATION, UNITED STATES CODE

* * * * * * *

Chapter 12A.—TENNESSEE VALLEY AUTHORITY

* * * * * * *

§ 831d. Directors; maintenance and operation of plant for production, sale, and distribution of fertilizer and power.

The board is authorized—

(a) * * *.

* * * * * * *

[(m) No products of the Corporation except ferrophosphorus shall be sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war or, until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, or until such earlier date or dates as the Congress by concurrent resolution or the President may provide but in no event after April 1, 1953, to nations associated with the United States in defense activities.]

TITLE 18.—CRIMES AND CRIMINAL PROCEDURE, UNITED STATES CODES

* * * * * * *

Chapter 67.—MILITARY AND NAVY

[§ 1383. Restrictions in military areas and zones.

[Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive order of the President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.]

TITLE 26.—INTERNAL REVENUE CODE, UNITED STATES CODE

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Chapter 1.—NORMAL TAXES AND SURTAXES

PART VI.—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

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[§ 168. Amortization of emergency facilities.

[(a) General rule.

[Every person, at his election, shall be entitled to a deduction with respect to the amortization of the adjusted basis (for determining gain) of any emergency facility (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the adjusted basis of the facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such adjusted basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction above provided with respect to any month shall, except to the extent provided in subsection (f), be in lieu of the depreciation deduction with respect to such facility for such month provided by section 167. The 60-month period shall begin as to any emergency facility, at the election of the taxpayer, with the month following the month in which the facility was completed or acquired, or with the succeeding taxable year.

[(b) Election of amortization.

[The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility was completed or acquired, or with the taxable year succeeding the taxable year in which such facility was completed or acquired, shall be made by filing with the Secretary or his delegate, in such manner, in such form, and within such time, as the Secretary or his delegate may by regulations prescribe, a statement of such election.

[(c) Termination of amortization deduction.

[A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary or his delegate before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply and the taxpayer shall not be entitled to any further amortization deduction with respect to such emergency facility.

[(d) Definitions.

[(1) Emergency facility.

For purposes of this section, the term "emergency facility" means any facility, land, building, machinery, or equipment, or any part thereof, the construction, reconstruction, erection, installation, or acquisition of which was completed after December 31, 1949, and with respect to which a certificate under subsection (e) has been made. In no event shall an amortization deduction be allowed in respect of any emergency facility for any taxable year unless a certificate in respect thereof under this paragraph shall have been made before the filing of the taxpayer's return for such taxable year.

[(2) Emergency period.

[For purposes of this section, the term "emergency period" means the period beginning January 1, 1950, and ending on the date on which the President proclaims that the utilization of a substantial portion of the emergency facilities with respect to which certifications under subsection (e) have been made is no longer required in the interest of national defense.

[(e) Determination of adjusted basis of emergency facility.

[In determining, for purposes of subsection (a) or (g), the adjusted basis of an emergency facility—

[(1) Certification on or before August 22, 1957.

[In the case of a certificate made on or before August 22, 1957, there shall be included only so much of the amount of the adjusted basis of such facility (computed without regard to this section) as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after December 31, 1949, as the certifying authority, designated by the President by Executive order, has certified as necessary in the interest of national defense during the emergency period, and only such portion of such amount as such authority has certified as attributable to defense purposes. Such certification shall be under such regulations as may be prescribed from time to time by such certifying authority with the approval of the President. An application for a certificate must be filed at such time and in such manner as may be prescribed by such certifying authority under such regulations, but in no event shall such certificate have any effect unless an application therefor is filed before March 24, 1951, or before the expiration of six months after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition, whichever is later.

[**(2) Certifications after August 22, 1957.**

[In the case of a certificate made after August 22, 1957, there shall be included only so much of the amount of the adjusted basis of such facility (computed without regard to this section) as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after December 31, 1949, as the certifying authority designated by the President by Executive order, has certified is to be used—

[(A) to produce new or specialized defense items or components of new or specialized defense items (as defined in paragraph (4)) during the emergency period,

[(B) to provide research, developmental, or experimental services during the emergency period for the Department of Defense (or one of the component departments of such Department), or for the Atomic Energy Commission, as a part of the national defense program, or

[(C) to provide primary processing for uranium ore or uranium concentrate under a program of the Atomic Energy Commission for the development of new sources of uranium ore or uranium concentrate,

and only such portion of such amount as such authority has certified is attributable to the national defense program. Such certification shall be under such regulations as may be prescribed from time to time by such certifying authority with the approval of the President. An application for a certificate must be filed at such time and in such manner as may be prescribed by such certifying authority under such regulations but in no event shall such certificate have any effect unless an application therefor is filed before the expiration of six months after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition. For purposes of the preceding sentence, an application which was timely filed under this subsection on or before August 22, 1957, and which was pending on such date, shall be considered to be an application timely filed under this paragraph.

[**(3) Separate facilities; special rule.**

[After the completion or acquisition of any emergency facility with respect to which a certificate under paragraph (1) or (2) has been made, any expenditure (attributable to such facility and to the period after such completion or acquisition) which does not represent construction, reconstruction, erection, installation, or acquisition included in such certificate, but with respect to which a separate certificate is made under paragraph (1) or (2), shall not be applied in adjustment of the basis of such facility, but a separate basis shall be computed therefor pursuant to paragraph (1) or (2), as the case may be, as if it were a new and separate emergency facility.

[(4) **Definitions.**

[For purposes of paragraph (2)—

[(A) **New or specialized defense item.**

[The term "new or specialized defense item" means only an item (excluding services)—

[(i) which is produced, or will be produced, for sale to the Department of Defense (or one of the component departments of such Department), or to the Atomic Energy Commission, for use in the national defense program, and

[(ii) for the production of which existing productive facilities are unsuitable because of its newness or of its specialized defense features.

[(B) **Component of new or specialized defense item.**

[The term component of a new or specialized defense item means only an item—

[(i) which is, or will become a physical part of a new or specialized defense item, and

[(ii) for the production of which existing productive facilities are unsuitable because of its newness or of its specialized defense features.

[(5) **Limitation with respect to uranium ore or uranium concentrate processing facilities.**

[No certificate shall be made under paragraph (2)(C) with respect to any facility unless existing facilities for processing the uranium ore or uranium concentrate which will be processed by such facility are unsuitable because of their location.

[(f) **Depreciation deduction.**

[If the adjusted basis of the emergency facility (computed without regard to this section) is in excess of the adjusted basis computed under subsection (e), the depreciation deduction provided by section 167 shall, despite the provisions of subsection (a) of this section, be allowed with respect to such emergency facility as if its adjusted basis for the purpose of such deduction were an amount equal to the amount of such excess.

[(g) **Payment by United States of unamortized cost of facility.**

[If an amount is properly includible in the gross income of the taxpayer on account of a payment with respect to an emergency facility and such payment is certified as provided in paragraph (1), then, at the election of the taxpayer in its return for the taxable year in which such amount is so includible—

[(1) The amortization deduction for the month in which such amount is so includible shall (in lieu of the amount of the deduction for such month computed under subsection (a)) be equal to the amount so includible but not in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amortization deduction for such month). Payments referred to in this subsection shall be payments the amounts of which are certified, under such regulations as the President may prescribe, by the certifying authority designated by the President as compensation to the taxpayer for the unamortized cost of the emergency facility made because—

[(A) a contract with the United States involving the use of the facility has been terminated by its terms or by cancellation, or

[(B) the taxpayer had reasonable ground (either from provisions of a contract with the United States involving the use of the facility, or from written or oral representations made under authority of the United States) for anticipating future contracts involving the use of the facility, which future contracts have not been made.

[(2) In case the taxpayer is not entitled to any amortization deduction with respect to the emergency facility, the depreciation deduction allowable under section 167 on account of the month in which such amount is so includible shall be increased by such amount, but such deduction on account of such month shall not be in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amount allowable, on account of such month, under section 167 of this paragraph).

[(h) Life tenant and remainderman.

[In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

[(i) Termination.

[No certificate under subsection (e) shall be made with respect to any emergency facility after December 31, 1959.]

TITLE 41.—PUBLIC CONTRACTS, UNITED STATES CODE

* * * * * * *

[Chapter 2.—TERMINATION OF WAR CONTRACTS

[§ 101. Declaration of policy.

[The Congress declares that the objectives of this chapter are—

[(a) to facilitate maximum war production during the war, and to expedite reconversion from war production to civilian production as war conditions permit;

[(b) to assure to prime contractors and subcontractors, small and large, speedy and equitable final settlement of claims under terminated war contracts, and adequate interim financing until such final settlement;

[(c) to assure uniformity among Government agencies in basic policies and administration with respect to such termination settlements and interim financing;

[(d) to facilitate the efficient use of materials, manpower, and facilities for war and civilian purposes by providing prime contractors and subcontractors with notice of termination of their war contracts as far in advance of the cessation of work thereunder as is feasible and consistent with the national security;

[(e) to assure the expeditious removal from the plants of prime contractors and subcontractors of termination inventory not to be retained or sold by the contractor;

[(f) to use all practicable methods compatible with the foregoing objectives to prevent improper payments and to detect and prosecute fraud.

[§ 102. Surveillance by Congress.

[(a) To assist the Congress in appraising the administration of this chapter and in developing such amendments or related legislation as may further be necessary to accomplish the objectives of this chapter, the appropriate committees of the Senate and the House of Representatives shall study each report submitted to the Congress under this chapter and shall otherwise maintain continuous surveillance of the operations of the Government agencies under this chapter.

[(b) Repealed. Oct. 31, 1951, ch. 654, § 1 (110), 65 Stat. 705.

[§ 103. Definitions.

[As used in this chapter—

[(a) The term "prime contract" means any contract, agreement, or purchase order heretofore or hereafter entered into by a contracting agency and connected with or related to the prosecution of the war; and the term "prime contractor" means any holder of one or more prime contracts.

[(b) The term "subcontract" means any contract, agreement, or purchase order heretofore or hereafter entered into to perform any work, or to make or furnish any material to the extent that such work or material is required for the performance of any one or more prime contracts or of any one or more other subcontracts; and the term "subcontractor" means any holder of one or more subcontracts.

[(c) The term "war contract" means a prime contract or a subcontract; and the term "war contractor" means any holder of one or more war contracts.

[(d) The terms "termination," "terminate," and "terminated" refer to the termination or cancellation, in whole or in part, of work under a prime contract for the convenience or at the option of the Government (except for default of the prime contractor) or of work under a subcontract for any reason except the default of the subcontractor.

[(e) The term "material" includes any article, commodity, machinery, equipment, accessory, part, component, assembly, work in process, maintenance, repair, and operating supplies, and any product of any kind.

[(f) The term "Government agency" means any Executive department of the Government, or any administrative unit or subdivision thereof, any independent agency or any corporation owned or controlled by the United States in the Executive branch of the Government, and includes any contracting agency.

[(g) The term "contracting agency" means any Government agency which has been or hereafter may be authorized to make contracts pursuant to section 611 of Appendix to Title 50, and includes the Reconstruction Finance Corporation and any corporation organized pursuant to the Reconstruction Finance Corporation Act, and the Secretary of Commerce.

[(h) The term "termination claim" means any claim or demand by a war contractor for fair compensation for the termination of any war contract and any other claim under a terminated war contract, which regulations prescribed under this chapter authorize to be asserted and settled in connection with any termination settlement.

[(i) The term "interim financing" includes advance payments, partial payments, loans, discounts, advances, and commitments in connection therewith, and guaranties of loans, discounts, advances and commitments in connection therewith and any other type of financing made in contemplation of or related to termination of war contracts.

[(j) The term "Administrator" means the Administrator of General Services.

[(k) The term "person" means any individual, corporation, partnership, firm, association, trust, estate, or other entity.

[(l) The term "termination inventory" means any materials (including a proper part of any common materials), properly allocable to the terminated portion of a war contract, except any machinery or equipment subject to a separate contract specifically governing the use or disposition thereof.

[(m) The term "final and conclusive," as applied to any settlement, finding, or decision, means that such settlement, finding, or decision shall not be reopened, annulled, modified, set aside, or disregarded by any officer, employee, or agent of the United States or in any suit, action, or proceeding except as provided in this chapter.

[§ 104. Administration of chapter; rules and regulations; personnel.

[(a) Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 652.

[(b) In order to insure uniform and efficient administration of the provisions of this chapter, the Administrator of General Services, subject to such provisions, by general orders or general regulations—

[(1) shall prescribe policies, principles, methods, procedures, and standards to govern the exercise of the authority and discretion and the performance of the duties and functions of all Government agencies under this chapter; and

[(2) may require or restrict the exercise of any such authority and discretion, or the performance of any such duty or function, to such extent as he deems necessary to carry out the provisions of this chapter.

[(c) The exercise of any authority or discretion and the performance of any duty or function, conferred or imposed on any Government agency by this chapter, shall be subject to such orders and regulations prescribed by the Administrator of General Services pursuant to subsection (b) of this section. Each Government agency shall carry out such orders and regulations of the Administrator of General Services expeditiously, and shall issue such regulations with respect to its operations and procedures as may be necessary to carry out the policies, principles, methods, procedures, and standards prescribed by the Administrator of General Services. Any Government agency may issue such further regulations not inconsistent with the general orders or regulations of the Administrator of General Services as it deems necessary or desirable to carry out the provisions of this chapter.

[(d) The Administrator of General Services may, within the limits of funds which may be made available, employ and fix the compensation of necessary personnel in accordance with the provisions of the civil-service laws and chapter 51 and subchapter III of chapter 53 of Title 5, and make expenditures for supplies, facilities, and services necessary for the performance of his functions under this chapter. Without regard to the provisions of the civil-service laws, he may employ certified public accountants, qualified cost accountants, industrial engineers, appraisers, and other experts, and contract with certified public accounting firms and qualified firms of engineers in the discharge of the duties imposed upon him and in furtherance of the objectives and policies of this chapter. The Administrator of General Services shall perform the duties imposed upon him through the personnel and facilities of the contracting agencies and other established Government agencies, to the extent that this does not interfere with the function of the Administrator of General Services to insure uniform and efficient administration of the provisions of this chapter.

[(e) All orders and regulations prescribed by the Administrator of General Services or any Government agency under this chapter shall be published in the *Federal Register*.

[§ 105. Contract Settlement Advisory Board; composition; duties.

[There is created a Contract Settlement Advisory Board, with which the Administrator of General Services shall advise and consult. The Board shall be composed of the Administrator of General Services who shall act as its Chairman, and of the Secretary of the Army, the Secretary of the Navy, the Chairman of the Maritime Commission, the Secretary of State, the chairman of the board of directors of the Reconstruction Finance Corporation, Secretary of Commerce, and the Attorney General or any alternate or representative designated by any of them. The Administrator of General Services shall request other Government agencies to participate in the deliberations of the Board whenever matters specially affecting them are under consideration.

[§ 106. Basis for settlement of termination claims.

[(a) Priority to private contractors.

[It is the policy of the Government, and it shall be the responsibility of the contracting agencies and the Administrator of General Services to provide war contractors with speedy and fair compensation for the termination of any war contract, in accordance with and subject to the provisions of this chapter, giving priority to contractors whose facilities are privately owned or privately operated. Such fair compensation for the termination of subcontracts shall be based on the same principles as compensation for the termination of prime contracts.

[(b) Establishment of methods and standards.

[Each contracting agency shall establish methods and standards, suitable to the conditions of various war contractors, for determining fair compensation for the termination of war contracts on the basis of actual, standard, average, or estimated costs, or of a percentage of the contract price based on the estimated percentage of completion of work under the terminated contract, or on any other equitable basis, as it deems appropriate. To the extent that such methods and standards require accounting, they shall be adapted, so far as practicable, to the accounting systems used by war contractors, if consistent with recognized commercial accounting practice.

[(c) Conclusiveness of settlement.

[Any contracting agency may settle all or any part of any termination claim under any war contract by agreement with the war contractor, or by determination of the amount due on the claim or part thereof without such agreement, or by any combination of these methods. Where any such settlement is made by agreement, the settlement shall be final and conclusive, except (1) to the extent otherwise agreed in the settlement; (2) for fraud; (3) upon renegotiation to eliminate excessive profits under section 1191 of Appendix to Title 50, unless exempt or exempted under such section; or (4) by mutual agreement before or after payment. Where any such settlement is made by determination without agreement, it shall likewise be final and conclusive, subject to the same exceptions as if made by agreement, unless the war contractor appeals or brings suit in accordance with section 113 of this title: *Provided*, That no settlement agreement hereunder involving payment to a war contractor of an amount in excess of $50,000 (or such lesser amount as the Administrator of General Services may from time to time determine) shall become binding upon the Government until the agreement has been reviewed and approved by a settlement review board of three or more members established by the contracting agency in the bureau, division, regional or district office, or other unit of the contracting agency authorized to make such settlement, or in the event of disapproval by the settlement review board, unless approved by the head of such bureau, division, regional or district office, or other unit. Failure of the settlement review board to act upon any settlement within thirty days after its submission to the board shall operate as approval by the board. The sole function of settlement review boards shall be to determine the over-all reasonableness of proposed settlement agreements from the point of view of protecting the interests of the Government. In determining, for purposes of this subsection, whether review of any settlement agreement is required because of the amounts involved, no deduction shall be made on account of credits for property chargeable to the Government or for advance or partial payments, but amounts payable under such settlement agreement for completed articles or work at the contract price and for the discharge of the termination claims of subcontractors shall be deducted.

[(d) Allowable costs.

[Except as hereinafter provided, the methods and standards established under subsection (b) of this section for determining fair compensation for termination claims which are not settled by agreement shall be designed to compensate the war contractor fairly for the termination of the war contract, taking into account—

[(1) the direct and indirect manufacturing, selling and distribution, administrative and other costs and expenses incurred by the war contractor which are reasonably necessary for the performance of the war contract and properly allocable to the terminated portion thereof under recognized commercial accounting practices; and

[(2) reasonable costs and expenses of settling termination claims of subcontractors related to the terminated portion of the war contract; and

[(3) reasonable accounting, legal, clerical, and other costs and expenses incident to termination and settlement of the terminated war contract; and

[(4) reasonable costs and expenses of removing, preserving, storing and disposing of termination inventories; and

[(5) such allowance for profit on the preparations made and work done for the terminated portion of the war contract as is reasonable under the circumstances; and

[(6) interest on the termination claims in accordance with subsection (f) of this section; and

[(7) the contract price and all amounts otherwise paid or payable under the contract.

[The following shall not be included as elements of cost:

[(i) Losses on other contracts, or from sales or exchanges of capital assets, fees and other expenses in connection with reorganization or recapitalization, antitrust or Federal income-tax litigation, or prosecution of Federal income-tax claims or other claims against the Government (except as provided in paragraph (3) of this subsection); losses on investments; provisions for contingencies; and premiums on life insurance where the contractor is the beneficiary.

[(ii) The expense of conversion of the contractor's facilities to uses other than the performance of the contract.

[(iii) Expenses due to the negligence or willful failure of the contractor to discontinue with reasonable promptness the incurring of expenses after the effective date of the termination notice.

[(iv) Costs incurred in respect to facilities, materials, or services purchased or work done in excess of the reasonable quantitative requirements of the entire contract.

[The failure specifically to mention in this subsection any item of cost is not intended to imply that it should be allowed or disallowed. The Administrator of General Services may interpret the provisions of this subsection and may provide for the inclusion or exclusion of other costs in accordance with recognized commercial accounting practices.

[Where the small size of claims or the nature of production or performance or other factors make it impracticable to apply the principles stated in this subsection to any class of settlements which are subject to this subsection, the contracting agencies may establish alternative methods and standards for determining fair compensation for that class of termination claims. The aggregate amount of compensation allowed in accordance with this subsection (excluding amounts allowed under paragraphs (3) and (4) of this subsection) shall not exceed the total contract price reduced by the amount of payments otherwise made or to be made under the contract.

[(e) Settlement by agreement.

[In order to carry out the objectives of this chapter, termination claims shall be settled by agreement to the maximum extent feasible and the methods and standards established under subsection (b) of this section shall be designed to facilitate such settlements. To the extent that he deems it practicable to do so without impeding expeditious settlements, the Administrator of General Services shall require the contracting agencies to take into account the factors enumerated in subsection (d) of this section in establishing methods and standards for determining fair compenastion in the settlement of termination claims by agreement.

[(f) Interest.

[Each contracting agency shall allow and pay interest on the amount due and unpaid from time to time on any termination claim under a prime contract at the rate of 2½ per centum per annum for the period beginning thirty days after the date fixed for termination and ending with the date of final payment, except that (1) if the prime contractor unreasonably delays the settlement of his claim, interest shall not accrue for the period of such delay, (2) if interest for the period after termination on any advance payment or loan, made or guaranteed by the Government, has been waived for the benefit of the contractor, the amount of the interest so waived allocable to the terminated contract or the terminated part of the contract shall be deducted from the interest otherwise payable hereunder, and (3) if after delivery of findings by a contracting agency, the contractor appeals or sues as provided in section 113 of this title, interest shall not accrue after the thirtieth day following the delivery of the findings on any amount allowed by such findings, unless such amount is increased upon such appeal or suit. In approving, ratifying, authorizing, or making termination settlements with subcontractors, each contracting agency shall allow interest on the termination claim of the subcontractor on the same basis and subject to the same conditions as are applicable to a prime contractor.

[(g) Amendment of contracts.

[Where any war contract does not provide for or provides against such fair compensation for its termination, the contracting agency, either before or after its termination, shall amend such war contract by agreement with the war contractor, or shall authorize, approve, or ratify an amendment of such war contract by the parties thereto, to provide for such fair compensation.

[§ 107. Settlement of subcontractors' claims.

[(a) Conclusiveness of settlement.

[Where, in connection with the settlement of any termination claim by a contracting agency, any war contractor makes settlements of the termination claims of his subcontractors, the contracting agency shall limit or omit its review of such settlements with subcontractors to the maximum extent compatible with the public interest. Any contracting agency (1) may approve, ratify, or authorize such settlements with subcontractors upon such evidence, terms, and conditions as it deems proper; (2) shall vary the scope and intensity of its review of such settlements according to the reliability of the war contractor, the size, number, and complexity of such claims, and other relevant factors; and (3) shall authorize war contractors to make such settlements with subcontractors without review by the contracting agency, whenever the reliability of the war contractor, the amount or nature of the claims, or other reasons appear to the contracting agency to justify such action. Any such settlement of a subcontract approved, ratified, or authorized by a contracting agency shall be final and conclusive as to the amount due to the same extent as a settlement under subsection (c) of section 106 of this title, and no war contractor shall be liable to the United States on account of any amounts paid thereon except for his own fraud.

[(b) Supervision of payments to war contractors.

[Whenever any contracting agency is satisfied of the inability of a war contractor to meet his obligations it shall exercise supervision or control over payments to the war contractor on account of termination claims of subcontractors of such war contractor to such extent and in such manner as it deems necessary or desirable for the purpose of assuring the receipt of the benefit of such payments by the subcontractors.

[(c) Group settlements.

[The Administrator of General Services shall prescribe policies and methods for the settlement as a group, or otherwise, by any contracting agency of some or all of the termination claims of a war contractor under war contracts with one or more (1) bureaus or divisions within a contracting agency, (2) contracting agencies, or (3) prime contractors and subcontractors, to the extent he deems such action necessary or desirable for expeditious and equitable settlement of such claims. After consulting with the contracting agencies concerned, the Administrator of General Services may provide for assigning any war contractor to a contracting agency for such settlement, and such agency shall have authority to settle, on behalf of any other contracting agency, some or all of the termination claims of such war contractor.

[(d) Direct settlement by contracting agency.

[Any contracting agency may settle directly termination claims of subcontractors to the extent that it deems such action necessary or desirable for the expeditious and equitable settlement of such claims. In making such termination settlements any contracting agency may discharge the claim of the subcontractor by payment or may purchase such claim, and may agree to assume, or indemnify the subcontractor against, any claims by any person in connection with such claim or the termination settlement. Any contracting agency undertaking to settle the termination claim of any subcontractor shall deliver to the subcontractor and the war contractor liable to him written notice stating its acceptance of responsibility for settling his claim and the conditions applicable thereto, which may include the release, or assignment to the contracting agency, of his claim against the war contractor liable to him; upon consent thereto by the subcontractor, the Government shall become liable for the settlement of his claims upon the conditions specified in the notice.

[(e) Amount of settlement.

[Any contracting agency may make settlements with subcontractors in accordance with any of the provisions of this chapter without regard to any limitation on the amount payable by the Government to the prime contractor.

[(f) Equitable payments.

[If any contracting agency determines that in the circumstances of a particular case equity and good conscience require fair compensation for the termination of a war contract to be paid to a subcontractor who has been deprived of and cannot otherwise reasonably secure such fair compensation, the contracting agency concerned may pay such compensation to him although such compensation already has been included and paid as part of a settlement with another war contractor.

[§ 108. Interim financing.

[(a) Prime contractors.

[It is the policy of the Government, and it shall be the responsibility of the contracting agencies and the Administrator of General Services, in accordance with and subject to the provisions of this chapter, to provide war contractors having any termination claim or claims, pending their settlement, with adequate interim financing, within thirty days after proper application therefor.

[(b) Method of financing; amounts payable.

[Each contracting agency shall, to the greatest extent it deems practicable, make available interim financing through loans and discounts, and commitments and guaranties in connection therewith, in contemplation of or related to termination of war contracts. Where interim financing is made by advance payments or partial payments, it shall, insofar as practicable, consist of the following:

[(1) An amount equal to 100 per centum of the amount payable, at the contract price, on account of acceptable items completed prior to the termination date under the terms of the contract, or completed thereafter with the approval of the contracting agency; plus

[(2) An amount equal to 90 per centum of the cost of raw materials purchased parts, supplies, direct labor, and manufacturing overhead allocable to the terminated portion of the war contract; plus

[(3) A reasonable percentage of other allowable costs, including administrative overhead, allocable to the terminated portion of the war contract not included in the foregoing; plus

[(4) Such additional amounts, if any, as the contracting agency deems necessary to provide the war contractor with adequate interim financing.

[(5) In lieu of the costs referred to in clauses (2) and (3) of this subsection, where a detailed ascertainment of such costs is not suitable to the conditions of any war contractor and is apt to cause delay in the obtaining of interim financing by him, that portion of such interim financing shall be equal to an amount not greater than 90 per centum of the estimated costs which are allocable to the terminated part or parts of the war contract or group of war contracts, and are ascertained in accordance with such methods and standards as the Administrator of General Services shall prescribe.

[(6) There shall be deducted from the amount of such interim financing any unliquidated balances of advance and partial payments theretofore made to such war contractor, which are allocable to the terminated war contract or the terminated part of the war contract.

[(c) Evidence to support financing.

[The Administrator of General Services shall prescribe (1) the types of estimates, certificates, or other evidence to be required to support such interim financing; (2) the terms and conditions upon which such interim financing shall be made including the use of standard forms for agreements with respect to such interim financing to the extent practicable; (3) the classes of cases in which such interim financing shall be refused; and (4) such methods of supervision and control over such interim financing as he deems necessary or desirable to assure adequate and speedy interim financing to subcontractors of the war contractor.

[(d) Penalty for overstatement of claims.

[In case of an overstatement by any war contractor of the amount due on his termination claim or claims in connection with any interim financing under this chapter, such contractor shall pay to the United States, as a penalty, an amount equal to 6 per centum of the amount of the overstatement, but the Administrator of General Services may suspend or modify any such penalty if in his opinion the imposition thereof would be inequitable. Any penalty may be deducted from any amounts due the war contractor upon such termination claim or claims, or otherwise, or may be collected from the war contractor by suit. The obligation to pay any penalty imposed and to repay any interim financing made or assumed by the United States under this chapter shall constitute a debt due to the United States within the meaning of section 191 of Title 31.

[(e) Advance payments as part of termination settlement.

[Any contracting agency may allow any advance payments, previously made or authorized by it in connection with the performance of a war contract, to be used for payments and expenses related to the termination settlement of such contract, upon such terms and conditions as it deems necessary or appropriate to protect the interest of the Government.

[(f) Liquidation of loans, etc., prior to final settlement.

[No interim financing shall be made by any contracting agency under this chapter unless the terms of such financing provide for the liquidation by the war contractor of all loans, discounts, advance payments, or partial payments thereunder not later than the time of final payment of the amount due on the settlement of the termination claim or claims of the war contractor involved or such time thereafter as the contracting agency deems necessary for the liquidation of such interim financing in an orderly manner.

[(g) Settlement of claims; validation of prior financing.

[Any contracting agency may settle, upon such terms and conditions as it deems proper, any claim or obligation due by or to the Government arising from or related to any interim financing made, acquired, or authorized by it. Any interim financing made, acquired, or authorized by any contracting agency before the effective date of this chapter shall be valid to the extent it would be authorized under the provisions of this chapter if made after its effective date.

[§ 109. Advance or partial payments to subcontractors; excessive payments, interest, liability of war contractor.

[(a) Any contracting agency may make advance or partial payments to any war contractor on account of any termination claim or claims, and may authorize, approve, or ratify any such advance or partial payments by any war contractor to his subcontractors, upon such conditions as it deems necessary to insure compliance with the provisions of subsection (b) of this section. Each contracting agency shall make final payments from time to time on partial settlements or on settlements fixing a minimum amount due before complete settlement, or as tentative payments before any settlement of the claim or claims.

[(b) Where any such advance or partial payment is made to any war contractor by any contracting agency or by another war contractor under this section, except a final payment on a partial settlement, any amount in excess of the amount finally determined to be due on the termination claim shall be treated as a loan from the Government to the war contractor receiving it, and shall be payable upon demand together with a penalty computed at the rate of 6 per centum per annum, for the period from the date such excess advance or partial payment is received to the date on which such excess is repaid or extinguished. Where the advance or partial payment was made by a war contractor and authorized, approved, or ratified by any contracting agency, the war contractor making it shall not be liable for any such excess payment in the absence of fraud on his part and shall receive payment or credit from the Government for the amount of such excess payment.

[§ 110. Guarantee of loans, advances, etc., for financing termination of contracts.

[(a) Any contracting agency is authorized—

[(1) to enter into contracts with any Federal Reserve bank, or other public or private financing institution, guaranteeing such financing institution against loss of principal or interest on loans, discounts, or advances or on commitments in connection therewith, which such financing institution may make to any war contractor or to any person who is or has been engaged in performing any operation deemed by such contracting agency to be connected with or related to war production, for the purpose of financing such war contractor or other person in connection with or in contemplation of the termination of one or more such war contracts or operations; and

[(2) to make, enter into contracts to make, or to participate with any Government agency, any Federal Reserve bank or public or private financing institution in making loans, discounts, or advances, or commitments in connection therewith, for the purpose of financing any such war contractor or other person in connection with or in contemplation of the termination of such war contracts or operations.

[(b) Any such loan, discount, advance, guaranty, or commitment in connection therewith may be secured by assignment of, or covenants to assign, some or all of the rights of such war contractor or other person in connection with the termination of such war contracts or operations, or in such other manner as the contracting agency may prescribe.

[(c) Subject to such regulations as the Board of Governors of the Federal Reserve System may prescribe with the approval of the Administrator of General Services, any Federal Reserve bank is authorized to act, on behalf of the contracting agencies, as fiscal agent of the United States in carrying out the purposes of this chapter.

[(d) This section shall not limit or affect any authority of any contracting agency, under any other statute, to make loans, discounts, or advances, or commitments in connection therewith or guaranties thereof.

[§ 111. Advance notice of termination.

[(a) In order to facilitate the efficient use of materials, manpower, and facilities for war and civilian purposes, each contracting agency—

[(1) shall provide its prime contractors with notice of termination of their prime contracts as far in advance of the cessation of work thereunder as is feasible and consistent with the national security without permitting unneeded production or performance;

[(2) shall establish procedures whereby prime contractors shall provide affected subcontractors with immediate notice of termination; and

[(3) shall permit the continuation of some or all of the work under a terminated prime contract whenever the agency deems that such continuation will benefit the Government or is necessary to avoid substantial injury to the plant or property.

[(b) Whenever a contracting agency hereafter directs a prime contractor to cease or suspend all or a substantial part of the work under a prime contract, without terminating the contract, then, unless the contract provides otherwise, (1) the contracting agency shall compensate the contractor for reasonable costs and expenses resulting from such cessation or suspension, and (2) if the cessation or suspension extends for thirty days or more, the contractor may elect to treat it as a termination by delivering written notice of his election so to do to the contracting agency, at any time before the contracting agency directs the prime contractor to resume work under the contract.

[(c) The Administrator of General Services shall have no authority under this chapter to regulate or control the classes of contracts to be terminated by the contracting agencies.

[§ 112. Removal and storage of materials.

[(a) Termination inventory.

[It is the policy of the Government, upon the termination of any war contract, to assure the expeditious removal from the plant of the war contractor of the termination inventory not to be retained or sold by the war contractor.

[(b) Statement on material of inventory.

[Any war contractor may submit to the contracting agency concerned or to any other Government agency designated by the Administrator of General Services, one or more statements showing the materials which such war contractor claims to be termination inventory under one or more war contracts and desires to have removed by the Government. Such statements shall be prepared in such form and detail, shall be submitted in such manner, through the prime contractor or otherwise, and shall be supported by such certificates or other data, as may be prescribed under this chapter.

[(c) Removal and storage by Government agency.

[Within sixty days after the submission of any such statement by a war contractor, or such shorter period as may be prescribed under this chapter, or within such longer period as the war contractor may agree, the Government agency concerned (1) shall arrange, upon such terms and conditions as may be agreed, for the storage by the war contractor on his own premises or elsewhere of all such claimed termination inventory which the war contractor does not retain or dispose of, except any part which may be determined not to be allocable to the terminated war contract or contracts, or (2) shall remove from the plant or plants of the war contractor all of such claimed termination inventory not retained, disposed of, or stored by the war contractor or determined not to be allocable to the terminated war contract or contracts.

[(d) Removal and storage by war contractor.

[Upon the failure of the Government so to arrange for storage by the war contractor or to remove any termination inventory within the period specified under subsection (c) of this section, the war contractor, subject to regulations prescribed under this chapter, may remove some or all of such termination inventory from his plant or plants and may store it on his own premises or elsewhere for the account and at the risk and expense of the Government, using reasonable care for its transportation and preservation. If any war contractor intends so to remove any claimed termination inventory, he shall deliver to the Government agency concerned written notice of the date fixed for removal and a statement showing the quantities and condition of the materials so to be removed, certified on behalf of the war contractor to have been prepared in accordance with a concurrent physical inventory of such materials. Such notice and statement shall be delivered at least twenty days in advance of the date fixed for removal and may be delivered before or after the expiration of the period specified under subsection (c) of this section. If the Government agency fails to check such materials, at or before the time of their removal by the war contractor, a certificate of the war contractor specifying the materials shown on such statement which were so removed, and filed with the Government agency concerned within thirty days after the date fixed for removal, shall constitute prima facie evidence against the United States as to the quantities and condition of the materials so removed, and the fact of their removal.

[(e) Acquisition by Government agency of inventory material; liability.

[Notwithstanding any other provisions of law, but subject to subsection (h) of this section, the contracting agency concerned or the Administrator of General Services, or any Government agency designated by him, on behalf of the United States, may, by the exercise of any contract right or otherwise, acquire and take possession of any termination inventory of any war contractor, and any materials removed by the Government or stored for its account under subsections (c) and (d) of this section, whether or not such materials are finally determined not to constitute termination inventory. With respect to any such materials, the Government shall be liable to any war contractor concerned only for their return to such war contractor or for their disposal value at the time of their removal or for the proceeds realized by the Government from their disposal, at the election of the Government agency concerned, unless the Government agency and the war contractor agree or have agreed on a different basis. Any amount so paid or payable to a war contractor for materials allocable to a terminated war contract shall be credited against the termination claim under such contract but shall not otherwise affect the amount due on the claim, unless the Government agency concerned and the war contractor agree or have agreed otherwise. Any materials to which the Administrator of General Services takes title under this section shall be delivered for disposal to any appropriate Government agency authorized to make such disposal.

[(f) Postponement or delay of termination settlement.

[No contracting agency shall postpone or delay any termination settlement beyond the period specified in subsection (c) of this section for the purpose of awaiting disposal by the war contractor or the Government of any termination inventory reported in accordance with subsection (b) of this section.

[(g) Government-owned machinery.

[Whenever any war contractor no longer requires, for the performance of any war contract, any Government-owned machinery, tools, or equipment installed in his plant for the performance of one or more war contracts, the Government agency concerned, upon written demand by the war contractor, and within sixty days after such demand or such other period as may be prescribed under this chapter, and upon such conditions as may be so prescribed, shall remove or provide for the removal of such machinery, tools, or equipment from such plant, unless the Government agency concerned and the war contractor, by facilities contract or otherwise, have made or make other provisions for the retention, storage, maintenance, or disposition of such machinery, tools or equipment. The Government agency concerned may waive or release on behalf of the United States any obligation of the war contractor with respect to such machinery, tools, or equipment upon such terms and conditions as the agency deems appropriate. Upon the failure of the Government so to remove or provide for removal of any such machinery, tools, or equipment, the war contractor, subject to regulations prescribed under this chapter, may remove all or part of such machinery, tools, or equipment from his plant and may store it on his own premises or elsewhere, for the account and at the risk and expense of the Government, using reasonable care for its transportation and preservation.

[(h) Limitation on Government acquisition of inventories.

[Nothing in this chapter shall limit or affect the authority of the Department of the Army, Department of the Air Force, Navy Department, or Maritime Commission, respectively, to take over any termination inventories and to retain them for their use for any purpose or to dispose of such termination inventories for the purpose of war production, or to authorize any war contractor to retain or dispose of such termination inventories for the purpose of war production.

[(i) Removal and storage by war contractor at own risk.

[Nothing in this section shall be construed to prevent the removal and storage of any termination inventory by any war contractor, at his own risk, at any time after termination of any war contract to which it is allocable.

[§ 113. Appeals.

[(a) Failure to settle claims by agreement; preparation of findings; notice to war contractor.

[Whenever the contracting agency responsible for settling any termination claim has not settled the claim by agreement or has so settled only a part of the claim, (1) the contracting agency at any time may determine the amount due on such claim or such unsettled part, and prepare written findings indicating the basis of the determination, and deliver a copy of such findings to the war contractor, or (2) if the termination claim has been submitted in the manner and substantially the form prescribed under this chapter, the contracting agency, upon written demand by the war contractor for such findings, shall determine the amount due on the claim or unsettled part and prepare and deliver such findings to the war contractor within ninety days after the receipt by the agency of such demand. In preparing such findings, the contracting agency may require the war contractor to furnish such information and to submit to such audits as may be reasonably necessary for that purpose. Within thirty days after the delivery of any such findings, the contracting agency shall pay to the war contractor at least 90 per centum of the amount thereby determined to be due, after deducting the amount of any outstanding interim financing applicable thereto.

[(b) Rights of war contractor.

[Whenever any war contractor is aggrieved by the findings of a contracting agency on his claim or part thereof or by its failure to make such findings in accordance with subsection (a) of this section, he may bring suit against the United States for such claim or such part thereof, in the Court of Claims or in a United States district court, in accordance with subsection (20) of section 41 of Title 28, except that, if the contracting agency is the Reconstruction Finance Corporation, or any corporation organized pursuant to the Reconstruction Finance Corporation Act, or any corporation owned or controlled by the United States, the suit shall be brought against such corporation in any court of competent jurisdiction in accordance with existing law.

[(c) Procudure.

[Any proceeding under subsection (b) of this section shall be governed by the following conditions:

[(1) When any contracting agency provides a procedure within the agency for protest against such findings or for other appeal therefrom by the war contractor, the war contractor, before proceeding under subsection (b) of this section, (i) in his discretion may resort to such procedure within the time specified in his contract or, if no time is specified, within thirty days after the delivery to him of the findings; and (ii) shall resort to such procedure for protest or other appeal to the extent required by the Administrator of General Services, but failure of the contracting agency to act on any such required protest or appeal within thirty days shall operate as a refusal by the agency to modify its findings. Any revision of the findings by the contracting agency, upon protest or appeal within the agency, shall be treated as the findings of the agency for the purpose of appeal or suit under subsection (b) of this section. Notwithstanding any contrary provision in any war contract, no war contractor shall be required to protest or appeal from such findings within the contracting agency except in accordance with this paragraph.

[(2) A war contractor may initiate proceedings in accordance with subsection (b) of this section (i) within ninety days after delivery to him of the findings by the contracting agency, or (ii) in case of protests or appeal within the agency, within ninety days after the determination of such protest or appeal, or (iii) in case of failure to deliver such findings, within one year after his demand therefor. If he does not initiate such proceedings within the time specified, he shall be precluded thereafter from initiating any proceedings in accordance with subsection (b) of this section, and the findings of the contracting agency shall be final and conclusive, or if no findings were made, he shall be deemed to have waived such termination claim.

[(3) Notwithstanding any contrary provision in any war contract, the court shall not be bound by the findings of the contracting agency, but shall treat such findings as prima facie correct, and the burden shall be on the war contractor to establish that the amount due on his claim or part thereof exceeds the amount allowed by the findings of the contracting agency. Whenever the court finds that the war contractor failed to negotiate in good faith with the contracting agency for the settlement of his claim or part thereof before appeal or suit thereon, or failed to furnish to the agency any information reasonably requested by it regarding his termination claim or part thereof, or failed to prosecute diligently any protest or appeal required to be taken under subsection (c)(1)(ii) of this section, the court (i) may refuse to receive in evidence any information not submitted to the contracting agency; (ii) may deny interest on the claim or part thereof for such period as it deems proper; or (iii) may remand the case to the contracting agency for further proceedings upon such terms as the court may prescribe. Unless the case is remanded, the court shall enter the appropriate award or judgment on the basis of the law and facts, and may increase or decrease the amount allowed by the findings of the contracting agency.

[(4) Any such proceedings shall not affect the authority of the contracting agency concerned to make a settlement of the termination claim, or any part thereof, by agreement with the war contractor at any time before such proceedings are concluded.

[(d) Omitted.

[(e) Arbitration.

[The contracting agency responsible for settling any claim and the war contractor asserting the claim, by agreement, may submit all or any part of the termination claim to arbitration, without regard to the amount in dispute. Such arbitration proceedings shall be governed by the provisions of United States Arbitration Act to the same extent as if authorized by an effective agreement in writing between the Government and the war contractor. Any such arbitration award shall be final and conclusive upon the United States to the same extent as a settlement under subsection (c) of section 106 of this title, but shall not be subject to approval by any settlement review board.

[(f) Conclusiveness of decisions.

[Whenever any dispute exists between any war contractor and a subcontractor regarding any termination claim, either of them, by agreement with the other, may submit the dispute to a contracting agency for mediation or arbitration whenever authorized by the agency or required by the Administrator of General Services.

[Any award or decision in such proceedings shall be final and conclusive as to the parties so submitting any such dispute and shall not be questioned by the United States in settling any related claim, in the absence of fraud or collusion.

[§ 114. Court of Claims.

[(a) Appointment of auditors.

[For the purpose of expediting the adjudication of termination claims, the Court of Claims is authorized to appoint not more than ten auditors.

[(b) Procedure.

[The Court of Claims, on motion of either of the parties, or on its own motion, may summon any and all persons with legal capacity to be sued to appear as a party or parties in any suit or proceeding or any nature whatsoever pending in said court to assert and defend their interests, if any, in such suits or proceedings, within such period of time prior to judgment as the Court of Claims shall prescribe. If the name and address of any such person is known or can be ascertained by reasonable diligence, and if he resides within the jurisdiction of the United States, he shall be summoned to appear by personal service; but if any such person resides outside of the jurisdiction of the United States, or is unknown, or if for any other good and suficient reason appearing to the court personal service cannot be had, he may be summoned by publication, under such rules as the court may adopt, together with a copy of the summons mailed by registered mail to such person's last known address. The Court of Claims may, upon motion of the Attorney General, in any suit or proceeding where there may be any number of persons having possible interests therein, notify such persons to appear to assert and defend such interests. Upon failure so to appear, any and all claims or interests in claims of any such person against the United States, in respect of the subject matter of such suit or proceeding, shall forever be barred and the court shall have jurisdiction to enter judgment pro confesso upon any claim or contingent claim asserted on behalf of the United States against any person who, having been duly served with summons, fails to respond thereto, to the same extent and with like effect as if such person had appeared and had admitted the truth of all allegations made on behalf of the United States. Upon appearance by any person pursuant to any such summons or notice, the case as to such person shall, for all purposes, be treated as if an independent proceeding has been instituted by such person pursuant to section 250 of Title 28, and as if such independent proceeding had then been consolidated, for purposes of trial and determination, with the case in respect of which the summons or notice was issued, except that the United States shall not be heard upon any counterclaims, claims for damages or other demands whatsoever against such person, other than claims and contingent claims for the recovery of money hereafter paid by the United States in respect of the transaction or matter which constitutes the subject matter of such case, unless and until such person shall assert therein a claim, or an interest in a claim, against the United States, and the Court of Claims shall have jurisdiction to adjudicate, as between any and all adverse claimants, their respective several interests in any matter in suit and to award several judgments in accordance therewith.

[(c) Jurisdiction.

[The jurisdiction of the Court of Claims shall not be affected by this chapter except to the extent necessary to give effect to this chapter, and no person shall recover judgment on any claim, or on any interest in any claim, in said court which such person would not have had a right to assert in said court if this section had not been enacted.

[§ 115. Personal financial liability of contracting officers.

[(a) Whenever any payment is made from Government funds to any war contractor or other person as an advance, partial or final payment on any termination claim, or pursuant to any loan, guaranty, or agreement for the purchase of any loan, or any commitment in connection therewith, entered into by the Government, no officer or other Government agent authorizing or approving such payment or settlement, or certifying the voucher for such payment, or making the payment in accordance with a duly certified voucher, shall be personally liable for such payment, in the absence of fraud on his part. In settling the accounts of any disbursing officer, the General Accounting Office shall allow any such disbursements made by him notwithstanding any other provisions of law.

[(b) For the purpose of making termination settlements or interim financing, any Government agency is authorized to rely upon such certificates of war contractors as it deems proper and to permit war contractors and other persons to rely upon such certificates without financial liability in the absence of fraud on their part.

[§ 116. Functions of General Accounting Office; certification of fraudulent settlements to Department of Justice; reports to Congress.

[(a) Any other provision of law notwithstanding, the function of the General Accounting Office with respect to any termination settlement made, authorized, ratified, or approved by a contracting agency shall be confined to determining, after final settlement, (1) whether the settlement payments to the war contractor were made in accordance with the settlement, and (2) whether the records transmitted to it, or other information, warrant a reasonable belief that the settlement was induced by fraud. For this purpose the General Accounting Office shall have the authority to examine any records maintained by any contracting agency or by any war contractor relating to any termination settlement.

[(b) Whenever the Comptroller General is convinced that any settlement was induced by fraud, he shall so certify, together with all the facts relating thereto, to the Department of Justice, to the Administrator of General Services, and to the contracting agency concerned. Upon receipt of such certificate (1) the Department of Justice shall make an investigation to determine whether such settlement was induced by fraud, and (2) until the Department of Justice notifies the contracting agency that in its opinion the facts do not support the belief that the settlement was induced by fraud, the contracting agency, by set-off or otherwise, may withhold, from amounts owing to the war contractor by the United States under such settlement or otherwise, the amount of the settlement, or the portion thereof, which in the opinion of the Comptroller General as stated in his certificate, was affected by the fraud. In any such case the Department of Justice shall take such action as it deems appropriate to recover payments made to such war contractor. The General Accounting Office shall not suspend credit to any disbursing officer on any disbursements made by him under such settlement in the absence of fraud on his part.

[(c) The Comptroller General may investigate the settlements completed by each contracting agency for the purpose of reporting to the Congress from time to time on—

[(1) whether the settlement methods and procedures employed by such agency are of a kind and type designed to result in expeditious and fair settlements in accordance with and subject to the provisions of this chapter and the orders and regulations of the Administrator of General Services;

[(2) whether such methods and procedures are followed by such agency with care and efficiency; and

[(3) whether such methods and procedures adequately protect the interest of the Government.

[If in any such report the Comptroller General shall find that the settlement methods and procedures fail to meet the foregoing standards, he shall make suggestions and recommendations to such agency for the improvement of such methods and procedures and to the Congress for any additional legislation needed to carry out the policies of this chapter. At least thirty days before filing any such report with the Congress, the Comptroller General shall deliver a copy thereof to the agency concerned and the Administrator of General Services, and shall forward to the Congress together with such report any comments of such agency with respect thereto.

[(d) The jurisdiction of the Comptroller General of the United States shall not be affected by this chapter except to the extent necessary to give effect to the specific provisions thereof.

[§ 117. Defective, informal, and quasi contracts; termination date for filing claims.

[(a) Where any person has arranged to furnish or furnished to a contracting agency or to a war contractor any materials, services, or facilities related to the prosecution of the war, without a formal contract, relying in good faith upon the apparent authority of an officer or agent of a contracting agency, written or oral instructions, or any other request to proceed from a contracting agency, the contracting agency shall pay such person fair compensation therefor.

[(b) Whenever any formal or technical defect or omission in any prime contract, or in any grant of authority to an officer or agent of a contracting agency who ordered any materials, services, and facilities might invalidate the contract or commitment, the contracting agency (1) shall not take advantage of such defect or omission; (2) shall amend, confirm, or ratify such contract or commitment without consideration in order to cure such defect or omission; and (3) shall make a fair settlement of any obligation thereby created or incurred by such agency, whether expressed or implied, in fact or in law, or in the nature of an implied or quasi contract.

[(c) Where a contracting agency fails to settle by agreement any claim asserted under this section, the dispute shall be subject to the provisions of section 113 of this title.

[(d) The Administrator of General Services shall require each contracting agency to formalize all such obligations and commitments within such period as the Administrator of General Services deems appropriate. No person shall be entitled to recover compensation, to receive a settlement of any alleged obligation, or to obtain the benefit of any amendment, confirmation, ratification, or formalization of any alleged contract or commitment under the provisions of subsections (a), (b), (c), or (d) of this section, unless such person shall, on or before one hundred and eighty days after June 28, 1954, have filed a claim therefor with the contracting agency.

[§ 118. Administration.

[(a) Records and forms.

[The Administrator of General Services shall establish policies for such supervision and review within the contracting agencies of termination settlements and interim financing as he deems necessary and appropriate to prevent and detect fraud and to assure uniformity in administration and to provide for expeditious settlements. For this purpose he shall prescribe (1) such records to be prepared by the contracting agencies and by war contractors as he deems necessary in connection with such settlements and interim financing; and (2) the records in connection therewith to be transmitted to the General Accounting Office. He shall seek to reduce the amount of record keeping, reporting, and accounting in connection with the settlement of termination claims and interim financing to the minimum compatible with the reasonable protection of the public interest. Each contracting agency shall prescribe forms for use by war contractors in connection with termination settlements and interim financing to the extent it deems necessary and feasible.

[(b) Repealed. Oct. 31, 1951, ch. 654, § 1 (111) 65 Stat. 705.

[(c) Advance notice on cut-backs.

[The Administrator of General Services, by regulation, shall provide for making available to any interested Government agency such advance notice and other information on cut-backs in war production resulting from terminations or failures to renew or extend war contracts, as he deems necessary and appropriate.

[(d) Investigations.

[The Administrator of General Services shall make such investigations as he deems necessary or desirable in connection with termination settlements and interim financing. For this purpose he may utilize the facilities of any existing agencies and if he determines that the facilities of existing agencies are inadequate, he may establish a unit in the General Services Administration to supplement and facilitate the work of existing agencies. He shall report to the Department of Justice any information received by him indicating any fraudulent practices, for appropriate action.

[(e) Certification of fraudulent settlements to Department of Justice.

[Whenever any contracting agency or the Administrator of General Services believes that any settlement was induced by fraud, the agency or Administrator of General Services shall report the facts to the Department of Justice. Thereupon, (1) the Department of Justice shall make an investigation to determine whether such settlement was induced by fraud, and (2) until the Department of Justice notifies the contracting agency that in its opinion the facts do not support the belief that the settlement was induced by fraud, the contracting agency, by set-off or otherwise, may withhold, from amounts owing to the war contractor by the United States under such settlement or otherwise, the amount of the settlement, or the portion thereof, which, in its opinion, was affected by the fraud. In any such case the Department of Justice shall take such action as it deems appropriate to recover payments made to such war contractor.

[§ 119. Fraudulent claims, vouchers, statements, etc.; jurisdiction.

[Every person who makes or causes to be made, or presents or causes to be presented to any officer, agent, or employee of any Government agency any claim, bill, receipt, voucher, statement, account, certificate, affidavit, or deposition, knowing the same to be false, fraudulent, or fictitious or knowing the same to contain or to be based on any false, fraudulent, or fictitious statement or entry, or who shall cover up or conceal any material fact, or who shall use or engage in any other fraudulent trick, scheme, or device, for the purpose of securing or obtaining, or aiding to secure or obtain, for any person any benefit, payment, compensation, allowance, loan, advance, or emolument from the United States or any Government agency in connection with the termination, cancellation, settlement, payment, negotiation, renegotiation, performance, procurement, or award of a contract with the United States or with any other person, and every person who enters into an agreement, combination, or conspiracy so to do, (1) shall pay to the United States an amount equal to 25 per centum of any amount thereby sought to be wrongfully secured or obtained but not actually received, and (2) shall forfeit and refund any such benefit, payment, compensation, allowance, loan, advance, and emolument received as a result thereof and (3) shall in addition pay to the United States the sum of $2,000 for each such act, and double the amount of any damage which the United States may have sustained by reason thereof, together with the costs of suit.

[The several district courts of the United States, the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person, or persons, doing or committing such act, or any one of them, resides or shall be found, shall, wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit, and such person or persons as are not inhabitants of or found within the district in which suit is brought may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct.

[§ 120. Powers and duties of contracting agencies.

[(a) Limitation.

[Each contracting agency shall have authority, notwithstanding any provisions of law other than contained in this chapter, (1) to make any contract necessary and appropriate to carry out the provisions of this chapter; (2) to amend by agreement any existing contract, either before or after notice of its termination, on such terms and to such extent as it deems necessary and appropriate to carry out the provisions of this chapter; and (3) in settling any termination claim, to agree to assume, or indemnify the war contractor against, any claims by any person in connection with such termination claims or settlement. This subsection shall not limit or affect in any way any authority of any contracting agency under First War Powers Act, 1941, or under any other statute.

[(b) Evidence required; conclusiveness of determinations.

[Any contracting agency may prescribe the amount and kind of evidence required to identify any person as a war contractor, or any contract, agreement, or purchase order as a war contract for any of the purposes of this chapter. Any determination so made that any person is a war contractor, or that any contract, agreement, or purchase order is a war contract, shall be final and conclusive for any of the purposes of this chapter.

[(c) Appropriations.

[There are authorized to be appropriated such sums as may be necessary for administering the provisions of this chapter.

[(d) Validation of prior settlements.

[All policies and procedures relating to termination of war contracts, termination settlements, and interim financing, prescribed by the Secretary of the Treasury or any contracting agency, in effect upon the effective date of this chapter, and not inconsistent with this chapter, shall remain in full force and effect unless and until superseded by the Administrator of General Services in accordance with this chapter, or by regulations of the contracting agency not inconsistent with this chapter or the policies prescribed by the Administrator of General Services.

[(e) Impairment of contract.

[Nothing in this chapter shall be deemed to impair or modify any war contract or any term or provision of any war contract or any assignment of any claim under a war contract, without the consent of the parties thereto, if the war contract, or the term, provision, or assignment thereof, is otherwise valid.

[(f) Aid to war contractors.

[Any contracting agency may authorize or direct its officers and employees, as a part of their official duties, to advise, aid, and assist war contractors in preparing and presenting termination claims, in obtaining interim financing, and in related matters, to such extent as it deems desirable. Such advice, aid or assistance shall not constitute a violation of section 198 of Title 18 or of any other law, provided the officer or employee does not receive therefor benefit or compensation of any kind, directly or indirectly, from any war contractor.

[§ 121. Administrator of General Services; additional duties.

[In addition to his other functions under this chapter, the Administrator of General Services shall—

[(a) promote the training of personnel for termination settlement and interim financing by contracting agencies, war contractors, and financing institutions;

[(b) Omitted.

[(c) promote decentralization of the administration of termination settlements and interim financing by fostering delegation of authority within contracting agencies and to war contractors, to the extent he deems necessary and feasible; and

[(d) consult with war contractors through advisory committees or such other methods as he deems appropriate.

[§ 122. Use of appropriated funds.

[Any contracting agency is authorized—

[(a) to use for interim financing, the payment of claims, and for any other purposes authorized in this chapter any funds which have heretofore been appropriated or allocated or which may hereafter be appropriated or allocated to it, or which are or may become available to it, for such purposes or for the purposes of war production or war procurement;

[(b) to use any such funds appropriated, allocated, or available to it for expenditures for or in behalf of any other contracting agency for the purposes authorized in this chapter; and [(c) to determine by agreement, joint estimate, or any other method authorized by the Administrator of General Services, the part of any expenditure made pursuant to subsection (b) of this section to be paid by each contracting agency concerned and to make transfers of funds between such contracting agencies accordingly. Transfers of funds between appropriations carried upon the books of the Treasury shall be made by the Administrator of General Services in accordance with joint requests of the contracting agencies involved.

[§ 123. Delegation of authority by Administrator of General Services.

[(a) The Administrator of General Services may delegate any authority and discretion conferred upon him by this chapter to such officers and agencies of the General Services Administration as he may designate, and may delegate such authority and discretion, upon such terms and conditions as he may prescribe, to the head of any Government agency to the extent necessary to the handling and solution of problems peculiar to that agency.

[(b) The head of any Government agency may delegate any authority and discretion conferred upon him or his agency by or pursuant to this chapter to any officer, agent, or employee of such agency or to any other Government agency, and may authorize successive redelegations of such authority and discretion.

[(c) Any two or more Government agencies may exercise jointly any authority and discretion conferred upon each of them individually by or pursuant to this chapter.

[(d) Nothing in this chapter shall prevent the Administrator of General Services from exercising any authority conferred upon him by any other statute.

[§ 124. Effective date; applicability to lend-lease contracts.

[(a) This chapter shall become effective twenty days after July 1, 1944. With the exception of the provisions of paragraphs (b)–(e) of section 112 of this title, and sections 106 and 110, and 113 of this title, this chapter shall be applicable in the case of any terminated war contract which has been finally settled at or before the effective date of this chapter.

[(b) Nothing in this chapter shall limit or affect any authority conferred by sections 411 to 419 of Title 22, or Acts supplemental thereto.

[§ 125. Exemption of certain contracts outside continental United States or in Alaska.

[Subject to policies prescribed by the Administrator of General Services, any contracting agency may exempt from some or all of the provisions of this chapter (a) any war contract made or to be performed outside the continental limits of the United States or in Alaska, or (b) any termination inventory situated outside of the continental limits of the United States or in Alaska, or (c) any modification of a war contract pursuant to its terms for the purpose of changing plans or specifications applicable to the work without substantially reducing its extent.]

TITLE 42.—THE PUBLIC HEALTH AND WELFARE, UNITED STATES CODE

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Chapter 6A.—THE PUBLIC HEALTH SERVICE

SUBCHAPTER I.—ADMINISTRATION

§ 211a. * * *

*   *   *   *   *   *   *

[§ 211b. Promotion of commissioned officers.

[(a) Temporary promotions prior to July 1, 1948.

[Except as provided in the third and fourth paragraphs of this section, no promotion shall be made under section 211 of this title, prior to July 1, 1948. Until that date officers of the Regular Corps may receive temporary promotions to higher grades with the pay and allowances thereof pursuant to section 211(a)(1) of this title, in force prior to February 28, 1948, notwithstanding the termination, prior to such date, of the war and of the national emergencies proclaimed by the President. Any officer holding, on June 30, 1948, an appointment pursuant to such section to a higher temporary grade shall continue in such grade until such appointment is terminated, as the President may direct.

[(b) Service credit.

[Effective as of February 28, 1948, each officer of the Regular Corps on such date, in addition to the credit he has under preexisting legislation for purposes of promotion, shall be credited with three years of service.

[(c) Promotion based on years of service; effective date; examination; service credit.

[Officers of the Regular Corps who have, or who on or before July 1, 1948, will have, the years of service prescribed in paragraph (2) of section 211(d) of this title, for promotion to the senior assistant, full, or senior grade, shall be recommended to the President for such promotion, to be effective as of July 1, 1948, whether or not vacancies exist in such grade. Such promotions shall be made without examination, except that no promotions shall be made to the senior grade or any grade immediately below a restricted grade until the officer is found qualified for promotion pursuant to subsection (c) of section 211 of this title. No promotion shall be made pursuant to this paragraph to any grade in any professional category if such grade has been made a restricted grade pursuant to subsection (b) of section 211 of this title. For purposes of seniority an officer promoted under this paragraph shall be credited with the years of service in the grade to which promoted equal to the excess of his years of service on the date of promotion over the years of service required for promotion to such grade under paragraph (2) of section 211(d) of this title.

[Officers in the junior assistant grade in the Regular Corps who have, or who on or before July 1, 1948, will have four or more years of service in the junior assistant grade, shall be recommended to the President for promotion to the assistant grade, to be effective as of July 1, 1948, without examination and whether or not vacancies exist in such grade. For purposes of promotion and seniority in grade, an officer promoted under this paragraph shall be credited with the years of service equal to the excess of his years of service on the date of promotion over four years.

[(d) Service for purpose of seniority.

[For purposes of seniority, any officer of the Regular Corps of the Public Health Service on February 28, 1948, shall be considered as having had service in the grade which he holds on such date equal to the excess of the service credited to him for promotion purposes over the length of service required under section 211(d)(2) of this title, for promotion to such grade.

[(e) Term or tenure of office unaffected prior to July 1, 1948.

[Except as provided in the third and fourth paragraphs of this section, the provisions of this section shall not, prior to July 1, 1948, affect the term or tenure of office (including any office held under temporary promotion) of any commissioned officer of the Service in office upon February 28, 1948.]

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Chapter 9.—HOUSING OF PERSONS ENGAGED IN NATIONAL DEFENSE

SUBCHAPTER IX.—DEFENSE HOUSING AND COMMUNITY FACILITIES AND SERVICES

[§ 1592. Authority of Administrator.

[Subject to the provisions and limitations of sections 1591 to 1591c of this title, and of this subchapter, the Housing and Home Finance Administrator (hereinafter referred to as the "Administrator") is authorized to provide housing in any areas (subject to the provisions of section 1591 of this title) needed for defense workers or military personnel or to extend assistance for the provision of, or to provide, community facilities or services required in connection with national defense activities in any area which the President, pursuant to the authority contained in said section, has determined to be critical defense housing area.]

TITLE 50, APPENDIX.—WAR AND NATIONAL DEFENSE, U.S. CODE

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TRADING WITH THE ENEMY ACT OF 1917

(Act October 6, 1917, Ch. 106, 40 Stat. 411)

§ 9. Claims to property transferred to custodian; notice of claim; filing; return of property; suits to recover; sale of claimed property in time of war or during national emergency.

(a) * * *

* * * * * * *

[(e) No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; *Provided*, That any arrangement made by a foreign nation for the release of money and other property of American citizens and certified by the Secretary of State to the Attorney General as fair and the most advantageous arrangement obtainable shall be regarded as meeting this requirement; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder; nor shall a debt be allowed under this section unless notice of the claim has been filed, or application therefor has been made, prior to the date of the enactment of the Settlement of War Claims Act of 1928.]

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SALE OF SURPLUS WAR-BUILT VESSELS

(Act Mar. 8, 1946, Ch. 82, 60 Stat. 41)

* * * * * * *

[§ 1742. Price adjustment on prior sales to citizens.

[(a) Form, manner, and time of application.

[A citizen of the United States who on the date of the enactment of this Act [March 8, 1946]—

[(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

[(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

[(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46], and which was delivered by its builder after December 31, 1940; or

[(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46],

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the *Federal Register* under section 3(c) of this Act [section 1736(c) of this Appendix]. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V [subchapter V of chapter 27 of Title 46] (including section 504 [section 1154 of Title 46]) or title VII of the Merchant Marine Act, 1936, as amended [subchapter VII of chapter 27 of Title 46].

[(b) Determination of amount.

[Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act [March 8, 1946], and not before that time. The amount of such adjustment shall be determined as follows:

[(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment [March 8, 1946]. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

[(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

[(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act [March 8, 1946] over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of 3½ per centum per annum.

[(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act [March 8, 1946] to the extent not credited under paragraph (1).

[(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of 3½ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act [March 8, 1946]) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

[(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act [March 8, 1946], and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act [March 8, 1946]).

[(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8 [section 1741 of this Appendix].

[(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c)(1) of this section, and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c)(1) of this section. If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

[For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46], shall be the net cost of the vessel to the owner.

[(c) Conditions binding on applicant.

[An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect that—

[(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act [March 8, 1946] for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b)(6) of this section shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b)(5) and (6) of this section shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act [March 8, 1946];

[(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act [March 8, 1946] under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment [March 8, 1946] and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act [March 8, 1946], depreciated to the date of loss at the rate of 5 per centum per annum: *Provided*, That the provisions of this subsection (c)(2) [of this section] shall not apply to any such charter party executed on or after the date of enactment of this amendatory proviso [August 6, 1956]; and the Secretary of Commerce is directed to modify any adjustment agreement to the extent necessary to conform to the provisions of this amendatory proviso; and

[(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act [March 8, 1946]; the compensation to be paid to the purchaser, his receivers, trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

[(d) Applicability of other laws.

[Section 506 of the Merchant Marine Act, 1936, as amended [section 1156 of Title 46], shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act [March 8, 1946].]

SENATE DEBATE AND ADOPTION OF S. 3957, 93RD CONGRESS

[Congressional Record—v. 120, Oct. 7, 1974—pp. S18356–S18367]

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1136, S. 3957, with the approval of the distinguished Senator from Idaho (Mr. McClure).

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 3957) to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MATHIAS. Mr. President, I send an amendment to the desk.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. MATHIAS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following: That this Act may be cited as the "National Emergency Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any Executive agency, as defined in section 105 of Title 5, United States Code, as a result of the existence of any declaration of national emergency in effect immediately prior to one year after the date of enactment of this Act are terminated one year from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" mean a general declaration of emergency made by the President pursuant to a statute authorizing him to declare a national emergency.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) In the event the President finds that a proclamation of a national emergency is essential to the preservation, protection and defense of the Constitution or to the common defense, safety, or well-being of the territory or people of the United States, the President is authorized to proclaim the existence of a national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the *Federal Register*.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

Sec. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency. At the end of each year following the declaration of an emergency which is still in effect, the President shall publish in the *Federal Register* and transmit to the Congress a notice stating that the emergency is still in effect. Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) of this subsection, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c) (1) A concurrent resolution to terminate or continue a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 602(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

TITLE III—DECLARATIONS OF WAR BY CONGRESS

SEC. 301. Whenever Congress declares war, any provisions of law conferring powers and authorities to be exercised during time of war shall be effective from the date of such declaration.

TITLE IV—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

SEC. 401. When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the *Federal Register* and transmitted to the Congress.

TITLE V—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 501. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each such Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within 30 days after the end of each three month period after such declaration, a report on the total expenditures incurred by the United States Government during such three month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than 30 days after the termination of each such emergency of war, the President shall transmit a final report on all such expenditures.

TITLE VI—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

SEC. 601. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of Title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled "Joint Resolution to authorize the temporary continuation of regulation of consumer credit," approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(m)) is repealed.

(e) Section 1383 of Title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes", approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal.

Sec. 602 (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken, thereunder:

(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95 (a); 50 U.S.C. App 5(b));

(2) Section 673 of Title 10, United States Code:

(3) Act of April 28, 1942 (40 U.S.C. 278b);

(4) Act of June 30, 1949 (41 U.S.C. 252);

(5) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(6) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15).

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a)(1)–(6) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions it may have, to its respective House of Congress within 270 days after the date of enactment of this Act.

Mr. Mathias. Mr. President, I offer this amendment in behalf of my distinguished colleagues and cochairman of the Special Committee on National Emergencies and Delegated Emergency Powers (Mr. Church), and in behalf of the members of the Special Committee—Mr. Hart, Mr. Case, Mr. Pearson, Mr. Pell, Mr. Stevenson, and Mr. Hansen.

Very briefly, some of these are amendments which have been suggested in behalf of the President by the Office of Management and Budget. They make certain technical changes in the bill as it was originally approved by the Special Committee, and thereafter approved by the Committee on Government Operations. They have been cleared with the distinguished chairman of the Committee on Government Operations (Mr. Ervin).

What they do is very simple. They extend the grace period provided in the bill from nine months to a year.

They provide that while Congress can terminate a national emergency at any time by concurrent resolution, there will be no automatic termination after six months if there is no affirmative action. This has been replaced by a requirement for the Congress to meet every six months to consider whether to terminate an emergency. An expedited privileged procedure would assure consideration and a vote should the Congress so decide.

We have reduced the list of statutes to be repealed. In working with the other body, partially as a result of Special Committee studies, most of the provisions that have been deleted from our original list are to be taken care of in various deadwood projects by the Codification Committee of the House of Representatives.

There are six statutes which are to be exempted from the provisions of this act. These statutes include Trading With the Enemy Act, a Ready Reserve provision, purchasing contract lease and claims authorities believed by the Executive branch to be absolutely essential for the operation of government. There is a requirement that the committees with jurisdiction over these provisions must make a study and report recommendations within nine months about modifications or any other changes to be made.

Finally, the requirement for accounting of expenditures incurred under the authority of emergency powers statutes suggested by Senator McClellan has been included.

Mr. President, over two years ago, the Senate created the Special Committee on the Termination of the National Emergency to examine the state of national emergency the United States was operating under and to make recommendations of how to best terminate the emergency and to provide for a regular and consistent procedure by which future emergencies could be met.

Soon after the bipartisan committee composed of four Democrats and four Republicans, with cochairmen, one from either party, began its work, it was evident that there were four states of national emergency in force and not just one as many in the Congress had assumed. The national emergency declared by President Franklin D. Roosevelt in March, 1933, to meet the problems of the Great Depression has not yet been terminated.

The national emergency declared by President Truman in December, 1950, to better prosecute the Korean conflict, is still in force. The national emergency proclaimed by President Nixon on March 23, 1970, to handle the Post Office strike, and the August 15, 1971, national emergency to meet balance of payments and other international economic problems of that time are still in force.

A majority of the people of the United States have lived all of their lives under emergency government. For four decades normal constitutional processes have not been the rule. The wars, emergencies, and crises of various kinds of the past 40 years, in addition to the growth of the Executive branch bureaucracy under the leadership of strong Presidents, and the diminished role of the Congress in the making of policy—these factors have all contributed to the erosion of constitutional government.

There is no valid reason for emergency rule to continue. We are not at war anywhere in the world and there are no other conditions that require the continued existence of a state of national emergency. Our government would be strengthened by bringing to an end all states of national emergency now in existence, and this termination should take place as soon as possible.

One course of action that seemed at first to be the simplest solution, namely, to end the existing states of emergency forthwith and to repeal all emergency statutes, was rejected by the Special Committee after intensive study, because it was clear that such drastic action could cause serious disruption of governmental processes. Some of the departments and agencies have used emergency authorities as basic everyday law. In the view of the Special Committee, it would be unwise to abruptly halt these operations without providing a reasonable period of time to make a transition from emergency law to permanent law.

An example of this everyday use of emergency authority is the so-called section 5(b) of the Trading With the Enemy Act. This provision which dates back to World War I and 1917 has been in constant use as a means to regulate many aspects of foreign trade and international monetary controls. Partially because of the prospect that the states of national emergency would be terminated, the Treasury Department has already begun to adjust to doing its business without the broad open-ended authorities contained in the section 5(b) provisions. The Special Committee has taken into account the need for a period of time to make the adjustment with the least possible disarray. For almost two years the Treasury Department has been aware that the states of national emergency would be terminated. The germane committees are aware of the problem. The committees of Congress with assigned jurisdictions and the Executive branch agencies should properly decide through the regular legislative process the provisions of any new or modified legislation. In order to assure an orderly transition, the Special Committee's view that a grace period of one year after date of enactment should be given to the Executive branch has been incorporated in the legislation now before the Senate.

Section 602(a) of the bill now before the Senate contains six provisions of law which the Executive branch has strongly urged continue in force. The Special Committee has concurred in this request. Section 602(b) would require the standing committees with jurisdiction over these statutes to study provisions and make a report to the Senate which would include recommendations and any proposed revisions. A similar process would be undertaken by the germane committees in the House. With the informed awareness now available to both the Legislative and Executive branches of provisions of law that have been used to meet emergency situations, it is reasonable to assume that some modifications will be made in some, if not all, of the statutes contained in section 601 after further study in the coming nine months by both the Executive branch and the committees of the Congress. In view of the Special Committee, the most effective way to resolve this kind of outstanding issue can best be done by the two branches working through the regular legislative process. But the burden to remove these exceptions lies most heavily upon the Congress.

The Special Committee wanted to be certain that the Executive branch of the U.S. Government would have the proper legal authority to act effectively to meet any future emergencies. To this end, the Special Committee asked every department and agency of the Executive branch and every standing committee of the Senate to evaluate the emergency powers statutes now in force as to their utility for use in any future emergency. This evaluation provides the basis for the repealer section of the National Emergencies Act, section 601. The statutes contained therein are considered obsolete by both the Executive branch agencies and by the committees. There is no disagreement between the branches that these obsolete provisions should be repealed.

There are other statutes among the 470 statutes that the respective standing committees may wish to repeal or modify at some future time should they so decide. The Special Committee now has in the process of being printed by the Government Printing Office, a Committee print in the form of a handbook for use by departments and agencies of the Executive branch and the committees of Congress containing a listing of all statutes with the evaluation made of these statutes by the Legislative and Executive branches.

The Special Committee understands that the Department of Defense may have special problems with regard to officer appointments, promotions, distribution in grade, separation and retirements that may not be resolved by the Armed Services Committees of the Congress and the Department of Defense by the time the termination of the national emergencies takes effect. I am confident that the Congress would look sympathetically upon any request to meet any unresolved problem should there be any after the states of national emergency are terminated.

There is one statute the Special Committee believes strongly should be repealed; namely, 18 U.S.C. 1383 which gives the President, the Secretary of the Army, or any general the authority to declare any part or even conceivably all of the United States a military zone. People in such zones can be put in jail for a year for violating any "Executive order of the President."

At the present time, only a small portion of the 470 delegated emergency powers is being used. This is one significant proof that there is no longer an "emergency" that requires extraordinary delegations of power. In the view of the Special Committee, permitting this body of potentially authoritarian power to continue in force in the absence of a valid national emergency situation poses a hazard to democratic government.

It is important to understand how the present state of emergency rule has come about. The failure to place emergency rule under firm constitutional guidelines must be considered as a failure by all three branches to carry out their respective constitutional responsibilities. Aggressive Presidents, permissive Congresses, and a long series of successive crises, have all contributed to the erosion of the structure of divided powers, the bedrock of our constitutional system of government.

The studies undertaken by the Special Committee of how the four states of national emergency came into being, and how the over 470 emergency statutes became the law of the land, provide a disturbing explanation of the deterioration of the constitutional responsibility for lawmaking during the past four decades.

In the particular area of emergency powers statutes, the constitutionally prescribed roles of the Legislative and Executive branches have been reversed. The Special Committee's studies show that in far too many instances, the Executive branch itself drafted the laws and cast them in such form as to give itself maximum flexibility. It is understandable that the Executive branch, in drafting laws granting power to itself, did not provide either for oversight or for termination by Congress. It is also not surprising that most of these laws were passed in times of crisis, when because of the urgency, Congress acted hastily without real scrutiny, without thorough hearings, and without the deliberation that such legislation should have demanded. For these reasons, Congress has not exercised its responsibilities prudently; it has not even reserved for itself the means to take back its delegated powers.

Now in a time of relative world peace, Congress has the opportunity to draw back and reexamine how profligately we have dealt with war and other emergencies. Our sobering experience with the undeclared Korean and Vietnam wars heightens the necessity to understand the means available within the Constitution to meet crisis situations affecting our national security.

The Special Committee has held extensive hearings seeking the views and advice of the country's most distinguished authorities on constitutional government in time of crisis. In addition to scholarly authorities in the fields of political science and the law, the Special Committee sought the counsel of all the former Attorneys General and two former Supreme Court Justices, as well as many distinguished lawyers.

The Special Committee has sought to obtain the views and opinions of each of the three branches about how to best meet the problem of emergency rule. The Special Committee thought it was particularly necessary to obtain not simply the present day perspective, but also the perspective of those who have served in successive administrations, Congresses, and courts over the past 41 years of emergency rule. It was particularly helpful to have views of those who have served as both Attorney General and Supreme Court Justice. We have the opinions, of course, of Justice Jackson in the most important Youngstown Steel case. We are fortunate to have a number of Attorneys General who have served in many capacities and not only in the Executive branch. A number of this country's most distinguished law schools have on their faculties men who have served their government in the executive branch or in the judiciary or as staff consultants to Congressional committees. In the view of the Special Committee, this broad perspective over the four decades of emergency rule was absolutely vital in order to consider the problem in a context that, of course, would include the immediate concerns of the respective branches but also the test of history and considered reflection on the part of those who have been through the experience and could objectively judge. Many of these views and opinions are contained in the published hearings of the Committee. Considerable valuable advice was given in study sessions at law schools or at private meetings held by members of the committee over the past two years.

On the basis of the suggestions and perspective gained from these hearings, and from two intensive staff studies of emergency power statutes and Executive orders, and upon the basis of the data, advice, and counsel supplied by the Executive branch, the Special Committee, working with the Executive branch at every step, drafted the legislation now before the Senate which would provide:

First. The termination of the present states of national emergency;

Second. The establishment of a regularized procedure for the use of delegated emergency power in future emergencies. The President could declare a national emergency and in his public proclamation would cite the specific statutory powers he requires to meet the emergency. A state of national emergency could be terminated at any time either by concurrent resolution or by a Presidential proclamation. The Congress would meet under a privileged expedited procedure by the end of six months to consider whether to continue a state of national emergency. If, by the end of six-month intervals, Congress takes no action, the state of national emergency would continue;

Third. A means of providing accountability for actions taken pursuant to emergency power statutes in any future emergency;

Fourth. A listing of those statutes which both the Executive branch and the respective standing committees of the Senate agree can be repealed because they are obsolete; and

Fifth. A listing of six statutes which will continue in force until such time as the Congress might act to modify or repeal them.

The Special Committee has been careful to consider the needs of the Executive branch to act promptly and effectively in a time of national emergency. From the outset, almost two years ago, we sought the advice of all the available former Attorneys General, former Supreme Court Justices including the late former Chief Justice Earl Warren. We have consulted with the departments and agencies led by a succession of Cabinet officers.

It is not surprising that there were, of course, different points of views on matters of detail. Understandably, officials in any present administration would like more flexibility rather than less. But over the past two years the Executive branch and the Special Committee have worked together to resolve differences. The bill now before the Senate is the result of two years of joint effort. We have sought to provide means to permit the Legislative and Executive branches to carry out their constitutional responsibilities as well as possible and in accord with the means prescribed by the Constitution for the respective branches.

In general, the record of cooperation over the past two years between the Legislative and Executive branches in working toward a legislative remedy has been exemplary. Every department and agency of the Executive branch has cooperated with requests from the Special Committee for information in their areas of jurisdiction. This cooperation has been a model of how the two branches can work together. The Special Committee. for example, would still be laboring through 87 volumes of the Statutes-At-Large to find out exactly what laws were involved, were it not for the assistance provided by the U.S. Air Force which had fortuitously put the United States Code into its LITE computer system located at a base in Colorado. The General Services Administration and particularly the Federal Register of the National Archives, provided invaluable help in bringing substance and understanding into the shadowy world of Executive orders issued pursuant to states of emergency. The Justice Department, largely through the counsel of Attorneys General themselves and the Office of Legal Counsel, has given expert advice to the Special Committee, and we gratefully acknowledge the importance of their assistance.

The Office of Management and Budget has helped the Special Committee by providing a detailed evaluation of the current utility of emergency statutes now in force. The Executive branch's coordinated evaluation of these statutes and a parallel evaluation by the standing committees assisted the Special Committee greatly to prescribe a remedy in accord with the constitutional responsibility of Congress to make laws. The Special Committee urges the Congress to proceed forthwith to end the four existing states of national emergency, repeal certain laws that both the Executive branch and the Congress believe obsolete, and to legislate a regular procedure to be used in the event of future national emergencies.

It has been an underlying premise of the Special Committee that the findings contained in the Youngstown Steel case of 1952, particularly the opinion of Justice Jackson, provide sound and pertinent guidelines for the governance of emergency powers. Justice Jackson, supporting the majority opinion that the "President's power must stem either from an act of Congress or from the Constitution itself," wrote:

> Emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the "inherent powers" formula. Nothing in my experience convinces me that such risks are warranted by any real necessity, although such powers would, of course, be an Executive convenience.
>
> In the practical working of our government we already have evolved a technique within the framework of the Constitution by which normal Executive powers may be considerably expanded to meet an emergency. Congress may and has

> granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in war or upon proclamation of a national emergency. . . .
>
> In view of the ease, expedition and safety with which Congress can grant and has granted large emergency powers, certainly ample to embrace this crisis, I am quite unimpressed with the argument that we should affirm possession of them without statute. Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction.
>
> But I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. A crisis that challenges the President equally, or perhaps primarily, challenges Congress. If not good law, there was worldly wisdom in the maxim attributed to Napoleon that "the tools belong to the man who can use them." We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.
>
> With all its defects, delays and inconveniences, men have discovered no techniques for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.

In our view, Congress should provide statutory guidelines to assure the full operation of constitutional processes in time of war or emergency. This is the best prescription to avoid any future exercise of arbitrary authoritarian power. For as the Youngstown case decided, where there is a statute, the Executive is obliged to use the statutory remedy; where there are no lawful statutory guidelines is to invite so-called inherent powers to come into play. There is without question a need, in view of the Special Committee, to provide the Executive branch with an effective, workable method for dealing with future emergencies in accord with constitutional processes. The Special Committee has sought to do this in fulfillment of its mandate.

During the past year, the Special Committee requested the assistance of the Majority and Minority Leaders in the preparation of guidelines for procedural actions to be taken on the part of the Senate in possible future emergencies. Because it is clear that if Congress is to fulfill its responsibilities to act in time of emergency, it must make preparations in advance to do so. The actions already taken by the leadership, in the view of the Special Committee, meet the needs that might reasonably be required by future emergencies.

Senator Church, the cochairman of the Special Committee, and I met with President Ford on August 22, to discuss the National Emergencies Act. He agreed in principle with the purposes contained therein. We were much encouraged by his understanding of and support for a solution to this most important question that confronts our constitutional system of government.

In addition, we have delayed action on this bill in order to permit the Executive branch to give us some further suggestions. We thought many of the proposals were helpful to the overall purpose and have included them as perfecting amendments to the bill.

We believe that the National Emergencies Act, now before the Senate, if enacted, would remove one threat to constitutional government by placing the exercise of emergency powers under a regular and consistent procedure consistent with the constitutional responsibilities of the separate branches. We urge the Senate to vote affirmative for this proposal to strengthen constitutional processes.

While it is important to stress that provisions of the National Emergency Act affect only those provisions of law which are specifically triggered by war or a state of national emergency, there are a number of other statutes not specifically cast in the form of emergency powers statutes, some of which are far-reaching in nature that are a part of the history of emergency rule. Some of these provisions have been referred to on pages 2 and 3 of the interim report of the Special Committee on National Emergencies and Delegated Emergency Powers in support of a recommended National Emergencies Act of September 24, 1974, Report No. 93–1170. It is the intention of the Special Committee in a final report to indicate those provisions of law that the regular standing committees should, in the view of the Special Committee examine carefully and consider whether changes would be warranted in the light of the present situation.

The Special Committee wishes to stress that the six statutes contained in section 602 deserve the most careful consideration by the committees with jurisdiction over the provisions. I ask unanimous consent that the texts of these provisions be printed in the Record at this point in my remarks.

There being no objection, the statutes were ordered to be printed in the Record, as follows:

12 U.S.C. 95a. REGULATION OF TRANSACTIONS IN FOREIGN EXCHANGE OF GOLD AND SILVER; PROPERTY TRANSFERS; VESTED INTERESTS, ENFORCEMENT AND PENALTIES

(1) *During the time of war or during any other period of national emergency declared by the President*, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through or to any banking institution, and the importing, exporting, hording, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer withdrawal transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this section either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this section, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this section.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise

directed, pursuant to this section or any rule, regulation, instruction or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this section, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this section the term "United States" means the United States and any place subject to the jurisdiction thereof: *Provided, however*, That the foregoing shall not be construed as a limitation upon the power of the President, which is conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this section, for any or all of the terms used in this section. Whoever willfully violates any of the provisions of this section or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this section the term "person" means an individual, partnership, association, or corporation. (Oct. 6, 1917, ch. 106, § 5(b), 40 Stat. 415; Sept. 24, 1918, ch. 176, § 5, 40 Stat 966; Mar. 9, 1933, ch. 1 title I, § 2, 48 Stat. 1; May 7, 1940, ch. 185, § 1, 54 Stat. 179; Dec. 18, 1941, ch. 593, title III, § 301, 55 Stat. 839; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 69 Stat. 1352.)

NOTE—TRADING WITH THE ENEMY ACT OF 1917

The Trading With the Enemy Act of 1917 has been amended frequently, and in the process its original purpose and effect have been altered significantly. The Act was originaly intended to "define, regulate and punish trading with the enemy," 40 Stat. 415. Directed primarily to meeting the exigencies of World War I, its drafters intended the Act to remain on the books for future *war* situations. 55 Cong. Rec. 4908. Accordingly, when other war powers were terminated in 1921 an exception was made for the Act and it remained valid law. 41 Stat. 1359 (the Knox Resolution).

On March 5, 1933, President Roosevelt relied on section 5(b) of the Trading with the Enemy Act as authority for his Proclamation 2039 which closed all banks for five days. This was clearly a time of financial crisis, not of war, and hence was not within the literal terms and purposes of the Act. Congress rectified the situation five days later when it ratified the President's proclamation and amended section 5(b) to give the President the broad wartime powers of that section in times of declared national emergency as well. 48 Stat. 1. The desperate economic circumstances of the time dictated the passage of this sweeping change—after only eight hours of Congressional consideration.

Roosevelt relied on section 5(b) again in 1939 when he restricted all transfers of currency and credit between the United States and German-occupied Denmark and Norway. Executive Order 8389. This action was subsequently approved and the President's exact powers clarified by Congress, resolving whatever questions may have remained about Congressional intentions to restrict the application of 48 Stat. 1 to either the economic emergency or to actual wars. 54 Stat. 179. This set the legal stage, then, to invoke Presidential powers and under the Trading With the Enemy Act in wartime or pursuant to *any* declaration of national peacetime emergency.

The next time these powers were involved was during World War II (with a slight Congressional modification—see 55 Stat. 838). A major expansion of Presidential authority was effected with the imposition of consumer credit controls (Executive Order 8843) by interpreting "banking institutions" as used in section 5(b) to include any person engaged in the business of making extensions of credit. Subsequent Congressional action has reaffirmed this power, too, in times of war or national emergency. 12 U.S.C. 249.

Another declaration of national emergency was made in Proclamation 2914 of December 16, 1950, during the Korean War. Trading With the Enemy Act powers were exercised pursuant to this proclamation throughout the war. Because the state of emergency so declared has never been terminated, however, this proclamation has continued to serve as the basis for invocation of powers under the Act. Most notably, President Johnson used section 5(b) as authority for Executive Order 11837 of January 1, 1968, imposing controls over transfers of private capital to foreign countries. (On the validity of this action, see *Opinion of the Attorney General*, February 3, 1968.)

On August 15, 1971, President Nixon, in Proclamation 4074, declared an emergency concerning America's declining worldwide economic position. He imposed an import surcharge and devalued the dollar, among other things. One year later, when the Export Control Act lapsed for a month, he invoked section 5(b) to regulate exports, basing his authority to do so both on his Proclamation 4074 and on President Truman's proclamation of 1950.

The current law, which has accreted over a period of 50 years, gives the President a wide range of powers, but only in time of war or declared national emergency. Although the Korean War has ended, these powers are being exercised solely on the basis of the 1950 emergency; or, on the basis of the President's unilaterally designating as "emergencies" situations which have only the most tenuous relationship to the serious national crises for which the Trading With the Enemy Act was originally intended. The President, with the approval of Congress, has thus used as authority for extraordinary actions laws which have no real relationship whatsoever to existing circumstances. As a consequence, a "national emergency" is now a practical necessity in order to carry out what has become the regular and normal method of governmental action. What were intended by Congress as delegations of power to be used only in the most extreme situations and for the most limited durations have become everyday powers; and a state of "emergency" has become a permanent condition.

Department of Justice,
May 21, 1974.

Memorandum for the Special Committee on the Termination of the National Emergency

Re: Emergency power under § 5(b) of the Trading With the Enemy Act

During the course of hearings held by the Committee frequent mention has been made of the Trading With the Enemy Act ("the Act"). Section 5(b) of the Act has been the statutory foundation for control of domestic as well as international financial transactions and is not restricted to "trading with the enemy." Its use over the years provides an interesting study in the evolution of a statute as a result of continuing interplay between the Executive and Congress. Of all the emergency statutes under study by the Committee, it has the most complex and varied history. This paper does not make any recommendations or draw any conclusions but presents a short legal chronology of § 5(b) to assist the Committee in understanding its background and present status.

I. ORIGINAL ENACTMENT—WORLD WAR I

The Act was passed in 1917 to "define, regulate, and punish trading with the enemy." 40 Stat. 415. Section 5(b) gave the President power to regulate transactions in foreign exchange, the export or hoarding of gold or silver coin or bullion or currency and transfers of credit in any form "between the United States and any foreign country, whether enemy, ally of enemy, or otherwise." 40 Stat. 415 (1917) as amended by 40 Stat. 966 (1918). Section 5(b), at that time, exempted "transactions to be executed wholly within the United States," thus appearing to limit its use as a basis for domestic controls. It did not include a provision permitting use of the Act during periods of national emergency nor was its use restricted by its terms to the duration of the First World War or any specified term after the end of the War. A law passed in 1921 terminating certain war powers specifically exempted the Act from termination because of the large amount of property held under the Act by the Alien Property Custodian at that time. See Ellingwood. *The Legality of the National Bank Moratorium*, 27 Nw. U.L. Rev. 923. 925–26 (1933).

II. DEPRESSION BANKING EMERGENCY

Upon taking office in March. 1933. President Roosevelt was pressed to deal promptly with a nationwide panic that threatened to drain the liquid resources of most of the banks in the country. *The Public Papers and Addresses of Franklin*

D. Roosevelt, pp. 24–29 (1933) [hereinafter "Roosevelt Papers"]. He therefore invoked the "forgotten provisions" of § 5(b) on March 6, 1933, to declare a bank holiday and control the export of gold. Schlesinger, *The Coming of the New Deal* 4 (1959). The bank holiday proclamation noted that there had been "heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding" and that increasing speculation abroad in foreign exchange had resulted in severe drain on domestic gold supplies, thus creating a "national emergency." Therefore, it was "in the best interest of all bank depositors that a period of respite be provided with a view to preventing further hoarding of coin, bullion or currency or speculation in foreign exchange." In order to prevent export or hoarding of bullion or currency, a bank holiday was, therefore, proclaimed from March 6 through March 9, 1933. Executive Proclamation No. 2039. March 6, 1933, 48 Stat. (Part 2) 1698.

By invoking § 5(b) as authority, President Roosevelt was, of course, using that provision for a different purpose than the one for which it was enacted in 1917. However, as one writer noted, closing the banks was "one of the surest and quickest ways" to prevent transactions in foreign exchange and the exportation of gold and silver coin, bullion and currency. Section 5(b) had, as noted, given the President power to regulate such matters. Ellingwood, *The Legality of the National Bank Moratorium*, 27 Nw. U.L. Rev. 923, 925 (1933).

Congress was called into session within days of the Proclamation. Roosevelt Papers 17. As soon as Congress was convened on March 9, 1933, it approved the bank holiday by passing the so-called Emergency Banking Act or Bank Conservation Act, 48 Stat. 1. That Act provided that the actions and proclamations "heretofore or hereafter taken . . . or issued by the President of the United States . . . since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed." (48 Stat. 1; 12 U.S.C. 95b (1970)). Congress thus "spread its protective approval over Executive acts the legality of which was uncertain." Ellingwood, *op. cit. supra* at 27 Nw. U.L. Rev. 929 (1933). Congress also amended section 5(b) to provide, among other things, that "[d]uring time of war or during any other period of national emergency declared by the President, the President may . . . regulate, under such rules and regulations as he may prescribe . . . transfers of credit between or payments by banking institutions as defined by the President. . . ." 48 Stat. 1. In the enactment clause Congress declared "that a serious emergency exists." 48 Stat. 1. The exclusion of domestic transactions, formerly found in the Act, was deleted from § 5(b) at this time.

The legislative history of the Emergency Banking Act is short; only eight hours elapsed from the time the bill was introduced until it was signed into law. There were no committee reports. Indeed, the bill was not even in print at the time it was passed. 77 Cong. Rec. 76, 80 (1933); Schlesinger, *The Coming of the New Deal* 8.

The abbreviated history shows Congress recognized that the powers conferred on the President by the Act were great. In the debate preceding the bill's passage those supporting it made such remarks as:

". . . In time of storm there can only be one pilot. In my judgment, the House of Representatives realizes that the pilot in this case must be the President of the United States, and they will steer their course by him (Rep. Goldsborough, 77 Cong. Rec. 81).

"It is a dictatorship over finance in the United States. It is complete control over the banking system in the United States. (Rep. McFadden, 77 Cong. Rec. 80).

"I realize that in time of peace we have perhaps never been called upon to vest such transcendent powers in the Executive as are provided for in this bill. . . . It is an emergency which can be adequately dealt with only by the strong arm of Executive power, and, therefore, I expect to vote for the bill, though it contains grants of powers which I never before thought I would approve in time of peace." (Sen. Connally, 77 Cong. Rec. 65).

The courts later upheld the validity of the bank holiday under the Act as amended, *E.g., Smith* v. *Witherow*, 102 F.2d 638, 641 (3d Cir., 1939); *Hardee* v. *Washington Loan & Trust Co.*, 91 F.2d 314 (D.C. Cir. 1937). Because of the prompt action taken by Congress in ratifying the March 6 proclamation, no judicial decisions were rendered on the question of whether the President's action, if taken alone, would have been lawful.

Subsequently in 1933–34, acting under § 5(b), President Roosevelt issued a series of orders which prohibited the hoarding of gold and directed that all gold bullion certificates be deposited with the Federal Reserve banks and which regulated transactions in foreign exchange:

(1) Executive Order 6073 of March 10, 1933, prohibited the export or removal of gold from the United States, except as authorized by the Secretary of the Treasury, and banks were prohibited from making transfers of foreign exchange except in connection with certain described transactions. This order did not specifically refer to a national emergency.

(2) Executive Order 6102 of April 5, 1933, generally required holders of gold coin, gold bullion, and gold certificates to surrender their holdings to Federal Reserve banks. This Order stated "By virtue of the authority vested in me by section 5(b) . . . as amended by section 2 of the Act of March 9, 1933, . . . in which amendatory Act Congress declared that a serious emergency exists, I . . . do declare that said national emergency still continues to exist."

(3) Executive Order 6111 of April 20, 1933, authorized the Secretary of the Treasury to regulate transactions in foreign exchange and the export or withdrawal of currency from the United States. The emergency basis for E.O. 6111 was stated in the same language as the language of E.O. 6102, quoted immediately above.

(4) Executive Order 6260 of August 28, 1933, was issued to supplant Executive Orders 6102 and 6111. This order prohibited the holding or export of gold, except under license issued by the Secretary of the Treasury, and authorized the Secretary to regulate or prohibit transactions in foreign exchange. In E.O. 6260 the President stated, "I . . . do declare that a period of national emergency exists." Executive Order 6260 was confirmed and amended by Presidents Eisenhower and Kennedy. 31 CFR Part 54. See 42 Op. A.G. No. 35, p. 9.

(5) Executive Order 6560, of January 15, 1934, authorized the Secretary of the Treasury to regulate transactions in foreign exchange, transfers of credit from American to foreign banks and export of currency or silver coin. This order is still on the books today. See 31 CFR Parts 127–128. In this Order, the President declared that "a period of national emergency continues to exist."

In January, 1934, Congress ratified all acts which had been performed under the Emergency Banking Act, 48 Stat. 343 (1934); 12 U.S.C. 213 (1970).

III. WORLD WAR II ALIEN PROPERTY FREEZE

Following the invasion of Norway and Denmark by Germany in April, 1940, President Roosevelt acted to protect funds of residents of these countries in the United States from withdrawal under duress by issuing an order freezing those assets except as authorized by the Secretary of the Treasury. Executive Order No. 8389 (April 10, 1940). The order referred to authority under § 5(b) but did not specifically mention the existence of a national emergency. The President had proclaimed a national emergency only months before in September, 1939; Proclamation No. 2352 noted the neutrality of the United States in the war and stated:

"Whereas measures required at this time call for the exercise of only a limited number of the powers granted in a national emergency:

"Now, therefore, I . . . do proclaim that a national emergency exists in connection with and to the extent necessary for the proper observance, safeguarding, and enforcing of the neutrality of the United States and the strengthening of our national defense within the limits of peacetime authorizations."

Subsequently on May 7, 1940, Congress passed a resolution "to remove any doubt" that § 5(b) authorized certain aspects of the freeze order. The Report of the Senate Banking Committee noted that when Congress passed the Emergency Banking Act, "it intended to grant to the President all of the powers conferred upon him by section 5(b) of the Act of October 6, 1917, and to authorize him to exercise all of such powers not only in time of war, but during any other period of national emergency." S. Rep. No. 1496, 76th Cong., 3d Sess. 1 (1949). By joint resolution, Congress thus approved and confirmed the order and amended § 5(b) to clarify the President's freeze power over alien property. 54 Stat. 179 (1940). See *United States* v. *Von Clemm*, 136 F. 2d 968, 970 (2d Cir. 1934), *cert denied*, 320 U.S. 769 (1943) upholding the retroactive validity of the 1940 joint resolution of Congress).

The original freeze order was an amendment to Executive Order No. 6560 of January, 1934, regulating foreign exchange and the export of coin and currency and the controls were somewhat similar to those exercised during the First

World War and during the banking crisis of 1933. This order, covering Norway and Denmark was followed by similar Executive orders after other nations were invaded or subjected to Axis domination. Eventually Germany, Japan and Italy were themselves covered in June and July, 1941. The purpose of the orders was to keep the Axis from using billions of dollars of assets in the United States. Roosevelt Papers (1940 vol.), pp. 133–34. Regulations issued by the Secretary of the Treasury, pursuant to a general delegation of Presidential authority under § 5(b) made in 1942, continues to this date to serve as the basis for blocking trade and financial transactions with North Korea, Cuba and North Vietnam. See 31 C.F.R. part 500 *et seq.;* Executive Order 9193, sec. 3, July 6, 1942, 7 Fed. Reg. 5205, and Executive Order 9989, Aug. 20, 1948, 13 Fed. Reg. 4891.

IV. CONSUMER CREDIT CONTROLS

Four months before the United States entered World War II, President Roosevelt issued Executive Order No. 8843, which directed the Federal Reserve Board to impose consumer installment credit controls as a measure to fight inflation, 6 Fed. Reg. 4035 (1941). The order was issued on August 9, 1941, under § 5(b) "in order, in the national emergency declared by me on May 27, 1941, to promote the national defense and protect the national economy. . . ." 6 Fed. Reg. 4035 (1941). On May 27, 1941, the President had issued Proclamation No. 2487 which proclaimed that "an unlimited national emergency confronts this country, which requires that its military, naval, air and civilian defense be put on the basis of readiness to repel any and all acts or threats of aggression directed toward any part of the Western Hemisphere."

In Executive Order 8843 the term "banking institution" as used in § 5(b), was defined to include any person engaged in the business of making extensions of credit whether a vendor of consumer durable goods or otherwise. The Federal Reserve Board was authorized, in order to prevent evasion of the order, to regulate any other extension of installment credit, any credit for the purpose of purchasing or carrying any consumers' durable goods or any other extension of credit in the form of a loan (other than loans to businesses or agricultural enterprises). 6 Fed. Reg. 4036.

There was some suggestion at the time that the definition of banking institution to include vendors of "consumer durable goods" was beyond the power conferred by § 5(b). One writer noted that the President had "disclosed hitherto unsuspected potentialities" in § 5(b) by using this definition of banking institutions and that a clearer statutory basis would be desirable for such controls. *Note, Federal Regulation of Consumer Credit by Executive Order.* 44 Column L. Rev. 1287, 1289 (1941)). See also *Price Control Bill, Hearings on H.R. 5479 before the House Banking and Currency Committee*, 77th Cong., 1st Sess., pp. 116–117 (1941). Nevertheless, the controls were accepted once the order was issued and never challenged in court. In December, 1941, Congress passed the First War Powers Act (55 Stat. 839) which included a provision approving and ratifying actions which had been taken under § 5(b), thus apparently approving Executive Order No. 8843.

After World War II, Congress on four occasions took legislative action concerning imposition by the Federal Reserve Board of consumer credit controls pursuant to § 5(b). The four actions by Congress are as follows:

(1) The Congress passed a joint resolution in 1947 which provided that after November 1, 1947, the Federal Reserve Board was not to exercise consumer-credit controls pursuant to Executive Order No. 8843. 61 Stat. 921, 12 U.S.C. 249. The joint resolution also provided that no "such consumer credit controls" could be exercised except during wartime or any national emergency thereafter declared by the President.

The legislation took this form because President Truman had decided to place the issue of the continuation of controls "in the laps of Congress" rather than rescind the controls himself by revoking the Executive order. 93 Cong. Rec. 9757. The legislative history of the 1947 resolution shows that Congress intended that the President have the power, if needed, to make such controls effective against the day after the resolution by declaring a new national emergency. See 98 Cong. Rec. 9753, 9758–59.

(2) On August 16, 1948, Congress changed its policy and authorized the Federal Reserve Board, "notwithstanding" the 1947 joint resolution, to exercise "consumer-credit controls in accordance with and to carry out the purposes of" Executive Order No. 8843. 62 Stat. 1291.

The legislative history of the 1948 act again affirms Congressional intent that the President retain his authority under Executive Order No. 8843 to exercise consumer credit controls thereafter during time of war or national emergency. It also made clear that he could have reimposed them on his own without the 1948 resolution. The House report noted:

"When the Congress terminated the controls over consumer credit pursuant to the provision of [12 U.S.C. 249], it specifically provided that such termination did not affect the authority to reimpose such controls during the time of war or any national emergency declared by the President. The President has evidently not seen fit to use this authority to reinstate the regulation of consumer credit and henceforth, the Committee proposes in this joint resolution for Congressional enactment of such powers for a temporary period with respect to consumer installment credit and at the same time reserve the authority to exercise consumer credit controls thereafter during the time of war or declaration of any national emergency by the President, H.R. Rep. No. 2455, 80th Cong., 2d Sess. 5–6 (1948).

The 1948 authority expired June 30, 1949.

(3) In § 601 of the Defense Production Act of 1950, using language patterned closely on that of the 1948 enactment, Congress again gave the Federal Reserve Board authority to exercise consumer credit controls under Executive Order No. 8843 "notwithstanding" the 1947 joint resolution. 64 Stat. 812.

(4) In June, 1952, while extending other parts of the act, including § 602, Congress repealed § 601, 66 Stat. 305. Repealing § 601 appeared to restore the provisions of the 1947 joint resolution (12 U.S.C. 249) authorizing the impositions of consumer credit controls again during a war or a period of national emergency.

V. FOREIGN DIRECT INVESTMENT PROGRAM

Section 5(b) was also used as authority for the Foreign Direct Investment Program in 1968. Under E.O. 11387 of January 1, 1968, controls were imposed by President Johnson over transfers of capital to foreign countries by substantial investors in the United States. A formal opinion was issued by Attorney General Ramsey Clark upholding the program. The opinion reviews the history of § 5(b). It also discusses the continuation of the national emergency declared by President Truman in Proclamation 2914 of December 16, 1950, which referred to the hostilities in Korea and the world menace of the forces of communist aggression. 42 Op. A.G. No. 35. The order relies on the continuation of this emergency.

On March 2, 1973, a Federal district court judge ruled orally that § 5(b) did not authorize an indictment charging a violation of the foreign direct investment program. The existence of a national emergency was not raised, however. An appeal is now being prepared. *United States v. Ryan*, Crim. No. 2038–78 (D.D.C. 1973). E.O. 11387 continues in effect today.

VI. EXPORT CONTROLS

Most recently, § 5(b) was used for a month in 1972 when it was invoked by President Nixon as authority for the regulations of exports. E.O. 11677 of August 1, 1972. Section 5(b) was used in this situation because the existing law authorizing export controls, the Export Administration Act of 1969, 83 Stat. 841, as amended by 86 Stat. 133, had expired. When export control legislation was re-enacted, E.O. 11677 was revoked by E.O. 11683 of August 29, 1972.

The Executive order imposing controls recited the continued existence of the national emergencies declared by Proclamation No. 2914 of December 16, 1950, referred to above, and by Proclamation No. 4074 of August 15, 1971, which imposed a supplemental duty on imports for balance of payments purposes.

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50 U.S.C. APP. 5. SUSPENSION OF PROVISIONS RELATING TO ALLY OF ENEMY: REGULATION OF TRANSACTIONS IN FOREIGN EXCHANGE OF GOLD OR SILVER, PROPERTY TRANSFERS, VESTED INTERESTS, ENFORCEMENT AND PENALTIES

(a) *The President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act* [sections 1 to 6, 7 to 39 and 41 to 44 of this Appendix] so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof [section 4(a) of this Appendix], and to perform any act made unlawful without such license in section three hereof [section 3 of this Appendix], and to file and prosecute applications under subsection (b) of section ten hereof [section 10(b) of this Appendix]; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act [sections 1 to 6, 7 to 39 and 41 to 44 of this Appendix]; and the President may exercise any power or authority conferred by this Act [said sections] through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof [section 3 of this Appendix] he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b)(1) *During the time of war or during any other period of national emergency declared by the President*, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to or transactions involving any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property of interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof: Provided, however, That

the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision, the term "person" means an individual, partnership, association, or corporation. (Oct. 6, 1917, ch. 196, § 5, 40 Stat. 415; Sept. 24, 1918, ch. 176, § 5, 40 Stat. 966; Mar. 9, 1933, ch. 1, § 2, 48 Stat. 1; May 7, 1940, ch. 185, § 1, 54 Stat. 179; Dec. 18, 1941, ch. 598, title III, § 301, 55 Stat. 839; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352.)

[See 12 U.S.C. 95 and 95a. *Supra.*]

10 U.S.C. 673. READY RESERVE

(a) *In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law,* an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committee on Armed Services of the Senate and the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent under this section at any one time. (Aug. 10, 1956, ch. 1041, 70A Stat. 28; Sept. 2, 1958, Pub. L. 85-861, §§ 1 (14), 33(a)(5), 72 Stat. 1441, 1564.)

NOTE—EXCERPT FROM HOUSE REPORT 1066, 82D CONG., 2D SESS. (1952)

NATIONAL EMERGENCY DECLARED BY THE PRESIDENT

In time of national emergency proclaimed by the President, or when otherwise authorized by law, any member of the Ready Reserve may be ordered to active duty without his consent for such period of time not to exceed 24 consecutive months, but no member could be ordered to active duty, under the committee amendment, until the Congress had determined the number of members needed for the national security. Members may be ordered as individuals or as units, but as in the previous subsection, the Committee has provided a safeguard against the ordering of individual members of units organized to serve as units. This provision would apply *only in a future national emergency proclaimed by the President* but would retain in effect the authority to order such members to active duty under section 21 of the UMTS Act with the limitations contained therein.

At present time all members of the Naval Reserve, Marine Corps Reserve, and the Coast Guard Reserve, may be ordered to active duty in time of Presidential emergency for the duration of the emergency and for six months thereafter. In addition, the President may, at any time, call out the National Guard and Air National Guard to enforce the laws of the United States, to quell insurrection, and in case of actual or threatened invasion. As far as the Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve are concerned, this subsection represents a substantial decrease in the number and the period of service of reservists liable to be ordered to active duty *in time of Presidential emergency.*

NOTE—EXCERPTS FROM HOUSE REPORT 1066, 82D CONG., 2D SESS. (1952)

THE READY RESERVE

The Ready Reserve defined by this section would contain those portions of the reserve components which would be most liable for active duty and which would be subject to call *in time of war, or national emergency declared by the President or the Congress, or when otherwise authorized by law.* The last phrase includes authority to order reservists to active duty pursuant to section 21 of the Universal Military Training and Service Act which is not affected by this bill.

Note, however, that under section 234(b), which authorizes the ordering of the Ready Reserve to active duty *in time of national emergency declared by the President,* the Congress must first determine the number of members who may be so ordered.

The Ready Reserve would be the only part of the reserve components which could be used *in a Presidential emergency* without further congressional action. At the present time, all of the Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve could be called to active service in a Presidential emergency. In addition, the entire National Guard and the entire Air National Guard is now callable by the President in case of threatened or actual invasion, insurrection, or to execute the Federal laws.

NOTE

Under this provision 1,000,000 men can be called to active duty. In addition, the National Guard can be federalized in a national emergency, which adds several thousand men to the total. In time of national emergency, therefore, in addition to existing armed forces at least eight divisions of troops, over 100 squadrons of aircraft and 55 ships, can be activated by order of the President.

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40 U.S.C. 278b. SAME; EXCEPTION OF CERTAIN VITAL LEASES DURING WAR OR EMERGENCY

The provisions of section 278a of this title shall not apply *during war or a national emergency declared by Congress or by the President* to such leases or renewals of existing leases of privately or publicly owned property as are certified by the Secretary of the Army or the Secretary of the Navy, or by such person or persons as he may designate, as covering premises for military, naval, or civilian purposes necessary for the prosecution of the war or vital in the national emergency. (Apr. 28, 1942, ch. 249, 56 Stat. 247.)

NOTE—EXCERPT FROM HOUSE REPORT 2029, 77TH CONG., 2D SESS. (1942)

The Committee on Expenditures in the Executive Departments, to whom was referred the bill (S. 2212) to suspend during a national emergency declared by Congress or by the President the provisions of section 322 of the Act of June 30, 1932, as amended, having considered the same, report favorably thereon with recommendation that it do pass with amendments.

The purpose of the proposed legislation is to render inapplicable to leases entered into by the Government for national defense purposes the present restrictions of section 322 of the Act of June 30, 1932, as amended (40 U.S.C. 278A), that the annual rental of properties leased may not exceed 15 percent of the market value of the premises on that date of the lease, and the further restriction that alterations, improvements, and repairs may not be made in an amount in excess of 25 percent of the amount of the rent for the first year of the rental term, or for the entire rental term if the lease runs for less than one year.

Testimony given by witnesses from the War Department indicates that these restrictions are impracticable in connection with leases of premises for the establishment of information and filter centers as part of aircraft warning service installations, and also in many other types of national defense leases, as, for example, the leasing of properties for use as offices and warehouses, for storage or manufacturing purposes. Navy Department expressed concurrence in these observations.

The Committee concurs in the view that all leases which are to be exempted from the provisions of section 322 of the Act of June 30, 1932, as amended, should be certified by the Secretary of War or the Secretary of the Navy, or their authorized representatives, as covering premises for military, naval, or civilian purposes necessary for the prosecution of the war or vital in the national emergency. The bill, as introduced, was amended by the Senate by insertion of appropriate language to this effect. This language will require Executive departments or establishments other than the War and Navy Departments to obtain a certificate from an authorized representative of the Secretary of War or the Secretary of the Navy to the effect that the lease in question is necessary for the *prosecution of the war or vital in the national emergency.* If no such certificate is obtained, the existing restrictions, which in the judgment of the Committee are desirable where prosecution of the war effort is not involved, will be applicable.

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41 U.S.C. 252. PURCHASES AND CONTRACTS FOR PROPERTY

(a) Applicability of chapter; delegation of authority.

Executive agencies shall make purchases and contracts for property and services in accordance with the provisions of this chapter and implementing regulations of the Administrator; but this chapter does not apply—

(1) to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, or

(2) when this chapter is made inapplicable pursuant to section 474 of Title 40 or any other law, but when this chapter is made inapplicable by such provision of law, sections 5 and 8 of this title shall be applicable in the absence of authority conferred by statute to procure without advertising or without regard to said section 5 of this title.

(b) Small business concerns; share of business; advance publicity on negotiated purchases and contracts for property.

It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for property and services for the Government shall be placed with small business concerns. Whenever it is proposed to make a contract or purchase in excess of $10,000 by negotiation and without advertising, pursuant to the authority of paragraph (7) or (8) of subsection (c) of this section, suitable advance publicity, as determined by the agency head with due regard to the type of property involved and other relevant considerations, shall be given for a period of at least fifteen days, wherever practicable, as determined by the agency head.

(c) Negotiated purchases and contracts for property; conditions.

All purchases and contracts for property and services shall be made by advertising, as provided in section 253 of this title, except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest *during the period of a national emergency declared by the President or by the Congress;*

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed $2,500;

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institution;

(6) the property or services are to be procured and used outside the limits of the United States and its possessions;

(7) for medicines or medical property;

(8) for property purchased for authorized resale;

(9) for perishable or nonperishable subsistence supplies;

(10) for property or service for which it is impracticable to secure competition;

(11) the agency head determines that the purchase or contract is for experimental, developmental or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test;

(12) for property or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(13) for equipment which the agency head determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in special situations or in particular localities in order to

assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest;

(14) for property or services as to which the agency head determines that bid prices after advertising therefor are not reasonable (either as to all or as to some part of the requirements) or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all or some of the bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder and (B) the negotiated price is the lowest negotiated price offered by any responsible supplier; or

(15) otherwise authorized by law, except that section 254 of this title shall apply to purchases and contracts made without advertising under this paragraph.

(d) Bids in violation of antitrust laws.

If in the opinion of the agency head bids received after advertising evidence any violation of the antitrust laws, he shall refer such bids to the Attorney General for appropriate action.

(e) Exceptions to section.

This section shall not be construed to (A) authorize the erection, repair, or furnishing of any public building or public improvement, but such authorization shall be required in the same manner as heretofore, or (B) permit any contract for the construction or repair or buildings, roads, sidewalks, sewers, mains, or similar items to be negotiated without advertising as required by section 253 of this title, unless such contract is to be performed outside the continental United States or unless negotiations of such contract is authorized by the provisions of paragraphs (1)—(3), (10)—(12), or (14) of subsection (c) of this section.

(f) Carriage of cargo; specification of container size.

No contract for the carriage of government property in other than government-owned cargo containers shall require carriage of such property in cargo containers of any stated length, height, or width. (June 30, 1949, ch. 288, title II, § 302, 63 Stat. 393; July 12, 1952, ch. 703, § 1 (m), 66 Stat. 594; Aug. 28, 1958, Pub. L. 85–800; § § 1–3, 72 Stat. 966; Nov. 8, 1965, Pub. L. 89–343, § § 1, 2, 79 Stat. 1303; Nov. 8, 1965, Pub. L. 89–348, § 1(2), 79 Stat. 1310; Mar. 16, 1968, Pub. L. 90–268, § 4, 82 Stat. 50.)

NOTE—EXCERPTS FROM HOUSE REPORT 670, 81ST CONG., 1ST SESS. (1949)

TITLE III. PROCUREMENT PROCEDURE

This title follows in structure, and is identical in language with the Armed Services Procurement Act, with a few appropriate changes and omissions.

Section 301. Declaration of purpose—

This section states that the purpose of title III is to facilitate the procurement of supplies and services.

Section 302. Application and procurement methods—

* * * * * * *

(*c*) Initially, this subsection reaffirms the basic principle that purchases and contracts shall be made by advertising. Negotiation is made permissible in certain excepted cases, however, to provide flexibility in Government procurement.

(1) This paragraph would permit automatic and immediate transition from more rigid peacetime advertising procedures to a completely flexible system if the President or the Congress declares the existence of a national emergency.

31 U.S.C. 203. ASSIGNMENTS OF CLAIMS; SET-OFF AGAINST ASSIGNEE

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, except as hereinafter provided, shall be obsolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers assignments and powers of attorney must recite the warrant for payment and must be acknowledged by the person making them before an officer having authority to take acknowledgements of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgement, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. The provisions of this section shall not apply to payments for rent of post office quarters made by postmasters to duly authorized agents of the lessors.

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency: *Provided*,

1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned;
2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment;
3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made in one party as agent or trustee for two or more parties participating in such financing;
4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section, shall constitute a valid assignment for all purposes.

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

Any contract of the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of (1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract, (2) fines, (3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract), or (4) taxes, social security contributions, or the withholding or nonwithholding of taxes or social security contributions, whether arising from or independently of such contract.

Except as herein otherwise provided, nothing in this section shall be deemed to affect or impair rights or obligations heretofore accrued. (R.S. § 3477; May 27, 1908, ch. 206, 35 Stat. 411; Oct. 9, 1940, ch. 779, § 1, 54 Stat. 1029; May 15, 1951, ch. 75, 65 Stat. 41.)

NOTE—EXCERPT FROM SENATE REPORT 217, 82D CONG., 1ST SESS. (1951)

The purpose of this enactment was to encourage the participation of banks in the financing of Government contractors under the defense program of that time. It permitted contractors to assign to financing institutions moneys due or to become due under their Government contracts, and it assured the assignee banks that, when payments were made to them by the Government pursuant to such assignments, such payments would not be subject to reduction or set-off on account of any claims the Government might have against the contractor arising independently of the assigned contract.

Enacted of S. 988, with Committee amendments, would make it clear that a bank or other financing institution taking an assignment of claims pursuant to the act would not be subject to later recovery by the Government of amounts previously paid to the bank as assignee, except, of course, that it would not prevent the Government from obtaining restitution of amounts which may have been paid as the result of fraud.

Second, the amendment would continue the provision of the present law that, if an assigned contract contains a "no set-off" clause, payments made by the Government to the assignee bank will not be subject to reduction or set-off because of any claims of the Government against the contractor which arise independently of the contract, but it would also be made clear that the assignee would be protected against set-off on account of claims of the Government against the contractor arising from renegotiation, fines, and penalties—claims which are ordinarily regarded as arising outside of the assigned contract. In any event, however, where the Government has claims against the contractor, the Government would be allowed to withhold, out of payments due to an assignee bank, any amounts in excess of the bank's interest in loans secured by such assignments.

Finally, the authority for including the "no set-off" clause in Government contracts, which is now restricted to the Departments of the Army, Navy, and Air Force, would be extended to contracts entered into by the General Services Administration, the Atomic Energy Commission, and such other agencies of the Government as the President may designate. However, authority for the inclusion of the clause would not be mandatory—it would be permissive in all cases at the discretion of the Government agencies concerned.

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41 U.S.C. 15. TRANSFERS OF CONTRACTS; ASSIGNMENT OF CLAIMS; SET-OFF AGAINST ASSIGNEE

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency: Provided, 1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned; 2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment; 3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing; 4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract;

and (c) the disbursing officer, if any, designated in such contract to make payment.

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section shall constitute valid assignment for all purposes.

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

Any contract of the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, *in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner*, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become under such contract whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of (1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract, (2) fines, (3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract), or (4) taxes, social security contributions, or the withholding or nonwitholding of taxes or social security contributions, whether arising from or independently of such contract.

Except as herein otherwise provided, nothing in this section shall be deemed to affect or impair rights or obligations heretofore accrued. (R. S. § 3737; Oct. 9, 1940, ch. 779, § 1, 54 Stat. 1029; May 15, 1951, ch. 75, 65 Stat. 41.)

NOTE—EXCERPT FROM SENATE REPORT 217, 82D CONG., 1ST SESS. (1951)

The Committee on Banking and Currency, to whom was referred the bill (S. 998) to facilitate the financing of defense contracts by banks and other financing institutions, to amend the Assignment of Claims Act of 1940, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

* * * * * * *

Enactment of S. 998, with Committee amendment, would make it clear that a bank or other financing institution taking an assignment of claims pursuant to the act would not be subject to later recovery by the Government of amounts previously paid to the bank as assignee, except, of course, that it would not prevent the Government from obtaining restitution of amounts which may have been paid as the result of fraud.

Secondly, the amendment would continue the provision of the present law that, if an assigned contract contains a "no set-off" clause, payments made by the Government to the assignee bank will not be subject to reduction or set-off because of any claims of the Government against the contractor which arise independently of the contract, but it would also be made clear that the assignee would be protected against set-off on account of claims of the Government against the contractor arising from renegotiations, fines, and penalties—claims which are ordinarily regarded as arising outside of the assigned contract. In any event, however, where the Government has claims against the contractor, the Government would be allowed to withhold, out of payments due to an assignee bank, any amounts in excess of the bank's interest in loans secured by such assignments.

Finally, the authority for including the "no set-off" clause in Government contracts, which is now restricted to the Departments of the Army, Navy, and Air Force, would be extended to contracts entered into by the General Services Administration, the Atomic Energy Commission, and such other agencies of the Government as the President may designate. However, authority for the inclusion of the clause would not be mandatory—it would be permissive in all cases at the discretion of the Government agencies concerned.

Mr. ROTH. Mr. President, as a sponsor of the National Emergencies Act, I am pleased with the rapid consideration which the Senate is giving to this important legislation. I strongly urge its passage today.

This bill represents another effort by Congress to insure that Congress and the President share equally the responsibility for major national policy decisions. This bill, for the first time, will establish criteria under which a national emergency can be declared by the President and provides for its automatic termination unless extended by Congressional action.

It also terminates four national emergencies which are still in effect. Most Americans do not know that since March 6, 1933, the United States has been in an official state of national emergency. The 1933 emergency was declared to deal with the Depression. In addition, three other national emergencies are concurrently in effect—the December 16, 1950, emergency in connection with the Korean War; the March 23, 1970, emergency to handle the Post Office strike; and the August 15, 1971, emergency to carry out certain currency restrictions to help our balance of payments.

Because Congress has been remiss in not terminating these emergencies, many outdated statutes designed to give the President wide-sweeping powers to meet the emergency situations of those times remain on the books. It is my understanding that in its almost two years of diligent work, the Special Committee on the Termination of the National Emergency compiled some 470 provisions of the United States Code which in some way or another delegate extraordinary powers to the President in times of war or national emergency.

It is important and essential that in such times, the President does have the powers needed to deal with the situation. But it is also essential that when the emergency is over, the emergency powers either terminate or are carefully reviewed to insure that they make sound and responsible permanent legislation.

In times of emergency, important legislation does not receive the time and attention which it would in normal times.

One provision that this bill would repeal gives the President, the Secretary of the Army, or any general the authority to declare any part or all of the United States a military zone, within which any act he designates may be punished as a crime. Such a sweeping provision represents a potential threat to American liberties and should certainly be struck from the books.

In my judgment, this bill devises a sensible way of insuring that rapid action can be taken to meet an emergency situation while safeguarding against the arbitrary and irresponsible use of such power by a future President. Under the bill, the President is authorized to declare a national emergency whenever he believes it "essential to the preservation, protection, and defense of the Constitution, and is essential to the common defense, safety, or well-being of the territory and people of the United States."

However, the emergency could be terminated by Congress by concurrent resolution and, if not, would expire at the end of six months unless explicitly continued by Congress. Moreover, the President would be required during the emergency to keep a list of all Executive orders, promulgations, rules, et cetera, made with respect to the emergency and transmit the texts to Congress. This provision will provide a comprehensive overview of all extraordinary acts taken during an emergency and a measure of Congressional oversight over such acts.

I believe that this bill strikes a careful balance between the need for the President to act in the case of war or another kind of national emergency and the requirements of shared powers and responsibilities between Congress and the President. I hope it will be passed today and speedily acted upon by the other House and signed into law by the President.

Mr. MATHIAS. Mr. President, I urge the adoption of the amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3957

An act to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act."

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any Executive agency, as defined in section 105 of Title 5, United States Code, as a result of the existence of any declaration of national emergency in effect immediately prior to one year after the date of enactment of this Act are terminated one year from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" mean a general declaration of emergency made by the President pursuant to a statute authorizing him to declare a national emergency.

TITLE II—DECLARATION OF FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) In the event the President finds that a proclamation of a national emergency is essential to the preservation, protection and defense of the Constitution or to the common defense, safety, or well-being of the territory or people of the United States, the President is authorized to proclaim the existence of a national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the *Federal Register*.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

SEC. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency.

At the end of each year following the declaration of an emergency which is still in effect, the President shall publish in the *Federal Register* and transmit to the Congress a notice stating that the emergency is still in effect. Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) of this subsection, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c) (1) A concurrent resolution to terminate or continue a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference is filed. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 602(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

TITLE III—DECLARATIONS OF WAR BY CONGRESS

SEC. 301. Whenever Congress declares war, any provisions of law conferring powers and authorities to be exercised during time of war shall be effective from the date of such declaration.

TITLE IV—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

SEC. 401. When the President declares a national emergency no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers, will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the *Federal Register* and transmitted to the Congress.

TITLE V—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 501. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each such Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within thirty days after the end of each three-month period after such declaration, a report on the total expenditures incurred by the United States Government during such three-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than thirty days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE VI—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

SEC. 601. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481 (a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667 (b) of Title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit," approved August 8, 1947, (12 U.S.C. 249) is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(m)) is repealed.

(e) Section 1383 of Title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes," approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal.

Sec. 602. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken, thereunder:

(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95(a); 50 U.S.C. App. 5(b));

(2) Section 673 of Title 10, United States Code;

(3) Act of April 28, 1942 (40 U.S.C. 278b);

(4) Act of June 30, 1949 (41 U.S.C. 252);

(5) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(6) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15).

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a)(1)–(6) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions it may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

Mr. Mansfield. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. Mathias. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. Mansfield. I thank the Senator from Idaho.

INTRODUCTION OF H.R. 16668, 93RD CONGRESS

[Congressional Record—v. 120, Sept. 16, 1974—pp. H9266, H9296]

BILL TO END UNTERMINATED NATIONAL EMERGENCIES

The SPEAKER. Under a previous order of the House, the gentleman from New Jersey (Mr. Rodino) is recognized for 5 minutes.

Mr. RODINO. Mr. Speaker, most Americans are unaware that they have been living under a continuous state of national emergency since 1933. In fact, there are four states of national emergency now in force:

The national emergency declared by President Roosevelt on March 6, 1933, to meet the crisis of the depression;

The December 16, 1950, national emergency declared by President Truman in order to prosecute the Korean War;

The national emergency declared by President Nixon on March 23, 1970, to deal with the Post Office strike; and

The national emergency declared by President Nixon on August 15, 1971, to carry out currency restrictions and foreign economic controls.

These four declarations of national emergency confer upon the President the power contained in over 470 emergency statutes to control the lives of all American citizens in ways which are justified only in an actual emergency. Congress has provided in statutes that during a national emergency the President may, among other things, seize property and commodities, organize and control the means of production, call to active duty 2.5 million reservists, assign military forces abroad, seize and control all means of transportation and communication, restrict travel, and institute martial law.

The exercise of authority under emergency statutes is taking place today when no national emergency in fact exists. Therefore, Mr. Speaker, I am introducing today a bill to end national emergencies declared by Presidents over the past four decades which have never been terminated. This proposal also would control the circumstances under which national emergencies are declared by Presidents in the future, and restrict the exercise of emergency authority to actual emergency situations only.

A similar bill has been introduced in the Senate by Senators Mathias and Church and has the support of President Ford. In my view, this proposal is important legislation which should be enacted before Congress adjourns this year.

It is my hope that this bill will receive the bipartisan support it merits. Its enactment would benefit the American people and do credit to the Congress by limiting the use of emergency powers to their proper context.

The bill does not take any emergency powers away from the President. Rather, it insures that such powers are exercised only during an actual emergency and that both Congress and the public are kept informed of the exercise of such emergency powers.

Declarations of national emergency presently in effect are terminated by the bill and future declarations of national emergency are limited to 180 days unless extended by Congress or declared anew. A system of reporting to Congress with respect to the exercise of extraordinary authority during a national emergency is established. Finally, certain emergency provisions, no longer needed under any circumstances, would be repealed if this bill is enacted into law.

TEXT OF H.R. 16668, 93RD CONGRESS

A BILL To terminate certain national emergencies still in effect, and to provide for the orderly implementation and termination of future national emergencies

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Emergencies Act".

LIMITING THE EXERCISE AND DURATION OF EMERGENCY AUTHORITIES

SEC. 2. No authority conferred under any law of the United States upon the President or upon any other officer, employee, agency, or other entity of the Government of the United States, as the result of any national emergency, shall be exercised except as provided under this Act. Any national emergency declared or otherwise designated as in effect on the date of the enactment of this Act is terminated on the two hundred and seventieth day after the date of the enactment of this Act, unless otherwise previously terminated.

DECLARING NATIONAL EMERGENCIES

SEC. 3. (a) In the event the President finds that the proclamation of a national emergency is essential to the preservation, protection, and defense of the Constitution, and is essential to the common defense, safety, or well-being of the territory and people of the United States, the President is authorized to declare the existence of a national emergency. Such declaration shall be made publicly, and shall be published as soon as practicable in the *Federal Register*.

(b) Any authority conferred under any law to be exercised during a national emergency declared or otherwise designated as in effect by the President shall be in effect in accordance with the provisions of that law and this Act, but only if the President has declared a national emergency in accordance with this section.

SPECIFYING NATIONAL EMERGENCIES' LEGAL BASIS

SEC. 4. Any authority conferred under any law to be exercised with respect to a war or a national emergency shall not be exercised until the President states in an Executive order issued with respect to that war or emergency, the specific provisions of law under which such authority is to be exercised. Such Executive order shall be transmitted to the Congress forthwith and shall be published as soon as practicable in the *Federal Register*.

TERMINATING NATIONAL EMERGENCIES

SEC. 5. (a) Except as otherwise provided in subsection (b) or (c) of this section, no authority conferred by law to be exercised with respect to a national emergency shall be exercised with respect to the emergency after that emergency is terminated, and any national emergency declared or otherwise designated in effect shall terminate on the one hundred eightieth day after the date of its declaration or designation.

(b) The Congress may by concurrrent resolution—

(1) determine that the national emergency is terminated on a date prior to the date of its termination under the provisions of subsection (a) of this section, in which case the emergency terminates on the day the concurrent resolution is finally agreed to by both Houses of the Congress, or on the day certain designated in the concurrent resolution, but the day certain shall not

be earlier than the day on which the concurrent resolution is finally agreed to by both Houses of the Congress; or

(2) determine that the national emergency is extended, in which case the national emergency terminates on the date to which it has been so extended (which date shall not be later than one hundred eighty days after the date on which the concurrent resolution is finally agreed to by both Houses of the Congress), but no resolution extending the termination date of a national emergency shall be valid for the purposes of this paragraph if finally agreed to prior to ten days before the date on which such emergency would terminate unless so extended.

(c) The President may determine that the national emergency is terminated on a date prior to the date of its termination under the provisions of subsection (a) or (b) of this section, in which case the emergency terminates on the day the President declares in an Executive order it is terminated.

RECORDS AND REPORTS ON EXERCISE OF AUTHORITIES

SEC. 6. In time of war or national emergency, the President shall cause to be maintained a current and accurate record (including an index thereof) of all instances of the exercise (including any rules or regulations, by whatever name called, established for that exercise) by the President or by any other officer, employee, agency, or entity of the Executive branch of the Government of the United States, of any authority conferred under law to be used during a war or national emergency, or both. Such record shall be made available, for inspection or copying, at all times during its maintenance, to either and both Houses of Congress, and to such committees of Congress as determined by the Speaker of the House and the President pro tempore of the Senate for their respective Houses in accordance with the rules of that House, and a copy of the entirety of such record shall be transmitted to the Congress upon the termination of the war or emergency with respect to which such record was kept. The Houses of Congress, its committees, Members, officers, and employees shall take such steps as are necessary to assure the proper confidentiality of any such record so available.

NO REPEAL BY IMPLICATION

SEC. 7 No law enacted after the date of the enactment of this Act shall be construed to repeal or supersede this Act unless it does so in specific terms, referring to this Act, and declaring that the new law supersedes the provisions of this Act.

REPEAL OF CERTAIN NATIONAL EMERGENCY PROVISIONS

SEC. 8. The following provisions of law are repealed:

(7 U.S.C. 1741), (7 U.S.C. 1742), (7 U.S.C. 1743), (7 U.S.C. 1744), (7 U.S.C. 1745), (7 U.S.C. 1746), (7 U.S.C. 1747), (8 U.S.C. 1481(a)(10)), (10 U.S.C. 2667(b)(4)), (10 U.S.C. 4025), (10 U.S.C. 9025), (12 U.S.C. 95), (12 U.S.C. 95(a)), (12 U.S.C. 249), (12 U.S.C. 1703), (12 U.S.C. 1705), (12 U.S.C. 1748b(a)), (16 U.S.C. 831d(m)), (18 U.S.C. 1383), (26 U.S.C. 168), (41 U.S.C. 101), (41 U.S.C. 102), (41 U.S.C. 103), (41 U.S.C. 104), (41 U.S.C. 105), (41 U.S.C. 106), (41 U.S.C. 107), (41 U.S.C. 108), (41 U.S.C. 109), (41 U.S.C. 110), (41 U.S.C. 111), (41 U.S.C. 112), (41 U.S.C. 113), (41 U.S.C. 114), (41 U.S.C. 115), (41 U.S.C. 116), (41 U.S.C. 117), (41 U.S.C. 118), (41 U.S.C. 119), (41 U.S.C. 120), (41 U.S.C. 121), (41 U.S.C. 122), (41 U.S.C. 123), (41 U.S.C. 124), (41 U.S.C. 125), (42 U.S.C. 211b), (42 U.S.C. 1592), (50 U.S.C. 9(e)), and (50 U.S.C. App. 1742).

INTRODUCTION OF H.R. 3884, 94TH CONGRESS

[Congressional Record—v. 121, Feb. 27, 1975—p. H1225]

PROVIDING FOR ORDERLY IMPLEMENTATION OF FUTURE EMERGENCIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. Rodino) is recognized for 5 minutes.

Mr. RODINO. Mr. Speaker, I have today introduced a bill providing for the termination of all powers and authorities relating to existing national emergencies and providing for the orderly implementation of future emergencies and for their continuation or termination. The bill is similar to the bill I introduced on the same subject in the 93d Congress and would meet the pressing need for statutory resolution and definition in this area of the law.

The time is overdue for the termination of existing emergencies and for a clear Congressional mandate that our governmental operations be conducted under regular and orderly processes of law rather than under provisions which were intended to be effective for limited periods to meet specific emergency conditions. In some instances where there has been a long and accepted use of some of this emergency authority that experience would seem to indicate a need for permanent legislation to deal with particular problems and situations. On the other hand, the actual need for such emergency authority may have disappeared with the emergency, and the appropriate committees of the Congress can consider legislation which can better serve our current needs and deal with the problems we face today.

It is intended that consideration of this bill will be initiated in the near future by the Committee on the Judiciary.

TEXT OF H.R. 3884. 94TH CONGRESS

A BILL To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act."

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any Executive agency, as defined in section 105 of Title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated one year from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President pursuant to a statute authorizing him to declare a national emergency.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) In the event the President finds that a proclamation of a natonal emergency is essential to the preservation, protection and defense of the Constitution or to the common defense, safety, or well-being of the territory or people of the United States, the President is authorized to proclaim the existence of a national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the *Federal Register*.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

SEC. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency.

At the end of each year following the declaration of an emergency which is still in effect, the President shall publish in the *Federal Register* and transmit to the Congress a notice stating that the emergency is still in effect. Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) of this subsection, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c) (1) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 602(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

TITLE III—DECLARATIONS OF WAR BY CONGRESS

Sec. 301. Whenever Congress declares war, any provisions of law conferring powers and authorities to be exercised during time of war shall be effective from the date of such declaration.

TITLE IV—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

Sec. 401. When the President declares a national emergency no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the *Federal Register* and transmitted to the Congress.

TITLE V—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

Sec. 501. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each such Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within thirty days after the end of each three-month period after such declaration, a report on the total expenditures incurred by the United States Government during such three-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than thirty days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE VI—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

SEC. 601. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of Title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit," approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(m)) is repealed.

(e) Section 1383 of Title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes," approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal.

SEC. 602. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken, thereunder:

(1) Section 5 (b) of the Act of October 6, 1917, as amended (12 U.S.C. 95(a); 50 U.S.C. App. 5(b));

(2) Section 673 of Title 10, United States Code;

(3) Act of April 28, 1942 (40 U.S.C. 278b);

(4) Act of June 30, 1949 (41 U.S.C. 252);

(5) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(6) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15).

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) (1)–(6) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions it may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94–238

NATIONAL EMERGENCIES

MAY 21, 1975.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. FLOWERS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 3884]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3884) to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 2, line 2: Strike "one year" and insert "two years".

Page 2, lines 13 and 14: Strike "pursuant to a statute authorizing him to declare a national emergency".

Page 3, line 21: After "clause (1)", insert "or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2)".

Page 6: Strike all of lines 14, 15, 16, 17, 18, and 19.

Page 6, line 20: After "TITLE", strike "IV" and insert "III".

Page 6, line 22: After "SEC.", strike "401" and insert "301".

Page 7, line 6: After "TITLE", strike "V" and insert "IV".

Page 7, line 8: After "SEC.", strike "501" and insert "401".

Page 7, line 12: After "each", strike "such".

Page 7, line 22: After "within" strike "thirty" and insert "ninety", and after "each" strike "three-" and insert "six-".

Page 7, line 25: Strike "three-month" and insert "six-month".

Page 8, line 2: Strike "thirty" and insert "ninety".

Page 8, line 5: After "TITLE", strike "VI" and insert "V".

Page 8, line 8: After "SEC.", strike "601" and insert "501".

Page 8, line 24: After "Act of 1933" insert "as amended".

Page 9, line 18: After "SEC", strike "602" and insert "502".

Page 9, line 22: Strike "95(a)" and insert "95a".

Page 9: Strike all of line 23.

Page 9, line 24: Strike "(3)" and insert "(2)".
Page 9, line 25: Strike "(4)" and insert "(3)".
Page 10, line 1: Strike "(5)" and insert "(4)".
Page 10, line 3: Strike "(6)" and insert "(5)".
Page 10, line 4: At the end of the sentence, strike the period and insert a semi-colon.
Page 10, after line 4: Insert:

> "(6) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431–1435);
> "(7) Section 2304(a)(1) of Title 10, United States Code:
> "(8) Sections 3313, 6386(c) and 8313 of Title 10, United States Code."

Page 10, line 7: Strike "(1)(6)".

PURPOSE

The purpose of the proposed legislation, as amended, is to terminate all powers and authorities under any national emergency existing on the date of enactment as of two years from that date.

As to future emergencies, the bill provides procedures and requirements concerning their declaration and termination and provides for powers and authority to be exercised in the case of future emergencies. It would also require that records be maintained of significant orders of the President and of agency rules and regulations issued during a war or national emergency, and that such orders and rules and regulations be transmitted to the Congress. A report of all expenditures directly attributable to the exercise of powers and authorities under a declaration of national emergency would have to be transmitted to the Congress within ninety days after each six month period under the declaration.

The bill provides for the repeal of certain obsolete statutes and for the continuance in effect of emergency powers and authority under listed statutes which are important to present functions of the Government.

STATEMENT

This is a bill which provides for a statutory resolution and definition concerning the exercise of the powers and authorities in connection with national emergencies which may occur in the future. By providing for a termination of powers and authorities relating to existing emergencies, the bill will make it possible for our Government to function in accordance with regular and normal provisions of law rather than through special exceptions and procedures which were intended to be in effect for limited periods during specific emergency conditions.

Presently, the national emergency declared in December of 1950 by President Truman in connection with the Korean conflict is in effect. The even earlier emergency declared by President Roosevelt in March of 1933 to meet the pressing problems of the depression has not actually been terminated. Two other emergencies are still in effect. There was a national emergency proclaimed on March 23, 1970 because of a Post Office strike, and again on August 15, 1971, a national emergency was declared to deal with balance of payments and other international problems. It can therefore be stated that there has been an emergency in one form or another for the last 43 years. This bill will have the positive effect of ending the practice of conducting governmental activity under authority of laws which derive force from emergencies declared years in the past to meet problems and situations which have long since disappeared or are now drastically changed. The history of continued and almost routine utilization of such emergency authorities for years after the original crisis has passed in the opinion of this committee serves only to emphasize the fact that there is an urgent need to provide adequate laws to meet our present day needs. Legislation intended for use in crisis situations is by its nature not well suited to normal, day-to-day government operations. It is also conceivable that the existence of emergency authority has actually discouraged legislative action. Routine statutory authorization may not have been sought by executive agencies or granted by the Congress because it was not then currently needed. One of the basic purposes of this bill is to provide a legislative basis for a return to a more rational and normal state of law in this phase of government operations and to eliminate unnecessary and undesirable emergency powers without, at the same time, upsetting dispositions that are routine and essential portions of our present legislative and administrative structure. In providing procedures to govern future emergencies, the bill will establish a system which will prevent such a continuing reliance on emergency statutes from recurring.

Prior to the consideration of legislation in the Senate, the Senate Special Committee on the Termination of the National Emergency conducted a two year study on the problems, application and scope of emergency statutes. An important aspect of that statute concerned the identification and analysis of emergency statutes. The bill S. 3957, which passed the Senate late in the last Congress, was to a large degree a product of the work of that special committee. The present bill H.R. 3884 incorporates the basic provisions of the earlier bill S. 3956 as it was finally passed by the Senate and referred to this Committee in the 93rd Congress. As is evidenced by the departmental reports received by this Committee on the earlier bill which are printed in this report and commented upon in connection with the provisions of the bill, the present bill and the recommendations of the Committee are a continuation of the work begun in the last Congress.

In the 93rd Congress, the bill H.R. 16668 on the subject of National Emergencies was introduced and referred to the Committee, and on October 7, 1974, as has been noted, a similar bill, S. 3957, passed the Senate and was also referred to this Committee shortly before the end of the Congress. While it was not possible to complete consideration of those measures in that Congress, the departmental reports received late in the year indicated general support for the bill as passed by the Senate. The reports contained additional material and background information which were considered by the committee in connection with the current bill, H.R. 3884. As introduced, H.R. 3884, with two changes, was identical to the bill passed by the Senate last fall. In addition to a technical change suggested by the Office of Management and Budget in its report on the earlier bill, the language of the bill was changed to provide that the termination of the powers and authorities relating to existing emergencies in section 101 of Title I of the bill would affect those powers and authorities under emergencies in effect on the date of enactment rather than one year from date of enactment as in the earlier version.

The report of the Committee received from the Department of Defense recognized that world conditions and national conditions have changed since the state of national emergency was declared in 1950. That department stated that it recognized the desirability of terminating existing states of emergency and further stated that it has no objection to their termination. The Department of Defense referred to the fact that some of these emergency authorities had over the years come to be relied upon in the day-to-day operations of the Department and that these continuing needs would have to be met. The Committee considered the effect of the bill on these functions and concluded that the two year period fixed in the amended bill would provide the Congress with a reasonable opportunity to consider permanent legislation to replace the authority provided under the specific emergency provisions that now provide statutory authority for such day-to-day functions. This period for orderly transition should preclude any undue disruption in government operations.

The report received from the Department of the Treasury on November 12, 1974, was considered by the Committee with particular reference to statutory authority for the regulations applicable during periods of financial crisis to banks which are members of the Federal Reserve System and the limitations and restrictions on the activities of such banks during those periods. That report stated the position of that department concerning the authority providing for regulation during emergencies of banking transactions, gold and silver activities, transactions in foreign exchange, and the exercise of rights in property subject to American jurisdiction in which foreign nationals have an interest. Some of these matters are of current significance, and therefore, the bill as reported by the Committee contains the exception in section 502(a)(1) concerning section 5(b) of the Act of October 6, 1917, the Trading With the Enemy Act. The Treasury Department also referred to certain provisions of law concerning current practices in the warehousing of merchandise in bonded warehouses. It noted that American importers have been permitted to warehouse merchandise in excess of the periods in excess of statutory periods fixed in sections 491, 557, and 559 of the Tariff Act of 1930 as the result of regulations authorized in a Presidential Proclamation issued under the authority of an emergency statute, section 318 of the Tariff Act of 1930 (19 U.S.C. 1318). The two year period fixed in the amended bill will make it possible for the appropriate committees to consider matters like this where authority originally provided in connection with an emergency situation has come to be relied upon in normal Government procedure and under current business practice.

Title 1 of the bill provides that after two years, all powers and authorities possessed by the President or other officer or employee of the Federal Government, based upon any declaration of national emergency in effect on the date of enactment will be terminated. The provisions of Title 1 terminating powers and authorities possessed by the Executive as the result of any prior declaration of national emergency are a basic part of the bill. It is recognized that an immediate termination without a period for transition in adjustment would undo and confuse many dispositions which are necessary and functioning parts of our Government. After study and consideration, the Congress may or may not wish to change some of these practices and procedures based upon the emergency statutes. The bill meets this problem in two ways: First, a limited number of powers and authorities which have been identified as necessary on a continuing basis are exempted from termination by section 502 of the amended bill. Second, as discussed above, the termination date for all other powers and authorities is set at two years from date of enactment. This will also serve to give Government departments and agencies a period in which to identify and bring to the attention of the Congress provisions which in their estimation merit legislative consideration.

In reports of the earlier bills and in testimony before the Committee, the Executive departments and agencies have indicated that they have identified all of their operations which are dependent upon emergency powers and authority for their continuing validity. In view of the number and the complexity of the statutes involved, there is a possibility that several provisions may have been overlooked. The definite limit fixed in the bill will require that the agencies take prompt action to review their legislative authority and make prompt recommendations to the Congress for any needed action. After the two year period the Government agency should be freed from a dependence on emergencies authority and Government operation will proceed on the basis of procedures under permanent law and under new enactments drafted to meet current needs and operations.

Any emergency declared after the date of enactment of this legislation would not be terminated by Title I, but would instead be governed by the limiting scheme created by Title II. By definition, Title I would affect those statutes whose conferral of powers is expressly conditioned upon a Presidential declaration of national emergency. This is provided in section 101(b), which defines "any national emergency in effect" to mean only "a general declaration of emergency made by the President." Accordingly, laws like the Defense Production Act of 1950, which do not require a Presidential declaration of emergency for their use, are not affected by this title—even though they may be referred to in a general sense as "emergency" statutes.

Title II of the bill concerns the declaration of future national emergencies. These provisions would require that in the future there shall be an improved definition and classification of the nature and effect of declarations of national emergencies. The provisions of this title of the bill, together with those of Titles III and IV of the amended bill, are included to insure that the Congress will exercise continuing and effective oversight in connection with any future emergencies. Section 201 concerns Presidential proclamations of a national emergency and authorizes such proclamations upon a finding that it is essential to the preservation, protection and defense of the Constitution or to the common defense, safety or well-being of the territory or people of the United States. This language of section 201(a) is not intended to grant any additional authority to the President. Rather it indicates the general nature of the circumstances in which a declaration might be issued. The proclamation would be immediately transmitted to the Congress and published in the *Federal Register*. Subsection (b) limits the effectiveness of provisions of law to be exercised during a national emergency to periods when a President's declaration of national emergency is in effect and then only in accordance with the balance of the provisions of the bill. This latter provision has particular reference to the provisions of section 301 which requires that the President specify the provisions of law he will utilize or under which other officers of the Government will act. Subsection (b) also contains a provision stating that no subsequent enactment will supersede the title unless it does so in specific terms declaring that the new law supersedes the provisions of the title.

Section 202(a) provides for the termination of national emergencies declared by the President in accordance with Title II of the bill. They would be terminated by concurrent resolution of the Congress or by a proclamation by the President. The subsection contains an additional requirement that at the end of each year following the declaration of an emergency which is still in effect, the President shall publish in the *Federal Register* and transmit to the Congress a notice stating that the emergency is still in effect. This title of the bill provides, for the first time, explicit provision for the President to make the declaration of national emergency which certain statutes require. While it might be asserted that the Chief Executive has inherent constitutional power to proclaim to the citizens his determination that there exists a national emergency. Under this bill such a general proclamation would not have the effect of placing any new statutory powers in his hands. This clarifies an existing problem as to emergency statutes. At present this power can be implied with respect to some statutes—for example, those which state that certain laws are deemed to be in effect "during any * * * period of national emergency declared by the President," in so many words, may declare such an emergency; and some statutes dependent upon the existence of states of emergency do not specifically say who shall declare them. The Committee has concluded that the bill will clarify the law in this report. When the Act fully takes effect, emergency provisions will only be implemented by the President in accordance with the terms of Title II and Title III of the amended bill. It should also be noted that when enacted into law the provisions of the bill would not supersede existing provisions of law which authorize Congressional declarations of emergency; its focus is only on Presidential declarations.

In providing for the termination of emergency powers as well as their commencement, the bill makes an important change in the law. The absence of such statutory requirements and procedures in the past has resulted in the failure to terminate emergency powers and this in turn has given rise to the present situation. Under present law, which does not contain explicit termination provisions, proposals for the use of emergency power often generate discussion as to whether existing emergencies have lapsed or grown stale due to passage of time and change of circumstances. Section 202 of the present bill will eliminate all uncertainty on that point, since it sets forth the prescribed means of termination and also requires the continuing existence of a state of emergency to be formally recorded each year.

As has been stated, the bill provides two methods for termination: a concurrent resolution by Congress, and a proclamation by the President. The second has been the traditional method for formally ending emergencies. Presidents have terminated a number of separate emergencies in the recent past. In 1952 President Truman terminated emergencies declared by President Roosevelt in 1939 and 1941.[1] Recent invocations of emergency power by the President have relied on two emergency declarations: Proclamation No. 2914 of December 16, 1950, and Proclamation No. 4074 of August 15, 1971.[2]

Subsections (b) and (c) of Section 202 provide for procedures which will govern the consideration of the Congress of a concurrent resolution which would terminate a national emergency. These provisions are very similar to those set forth in section 7 of Public Law 93–148, the War Powers Act, of November 7, 1973. Subsection (b) provides that not later than six months after a national emergency is declared, and then after each following six-month period during the continuance of an emergency, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated. It is further provided that in either House a concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee and a resolution is to be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays. Upon being reported, the concurrent resolution shall become the pending business of the House in question and shall be voted on within three calendar days, unless such House shall otherwise determine by yeas and nays. Upon passage by one House, the concurrent resolution is to be referred to the appropriate committee of the other House and it similarly would be required to be reported out in fifteen calendar days. It would become the pending business of that House and be voted upon within three calendar days unless otherwise determined by that House by vote of the yeas and nays.

In the event of disagreement between the two Houses on the concurrent resolution passed by both, the bill would require that conferees be promptly appointed and their report filed within six days and the House would be required to act within six calendar days thereafter. Should the conferees disagree within forty-eight hours they are to report back to their respective Houses in disagreement. These provisions of subsection 202(c) are stated to be an exercise of the rulemaking power of the House and Senate, and the constitutional power of either House to change its rules is specifically recognized in the bill.

Section 301 of the amended bill contains the provision referred to above providing that powers and authorities made available by statute for use during national emergencies are effective after a declaration of national emergency only after the President specifies the specific provisions of such laws which will be utilized. Under existing law, such a declaration would have the effect of reviving many emergency provisions throughout the United States Code, whether or not they are relevant to the emergency at hand. In many cases, the provisions are not self-executing, so that their mere availability does not bring them into force without specific implementing directives. In other cases, however, changes in law automatically take effect during times of national emergency.[3] Section 301 of the amended bill would change this by establishing that no provision of law shall be triggered by a declaration of national emergency unless and until the President specifies that provision as one of those under which he or other officers will act. The specification may be made either in the declaration of national emergency or in subsequent Executive orders. This will enable the Executive to choose specific provisions needed to deal with the emergency at hand; and it will put Congress and the public on notice as to precisely what laws are going to be invoked.

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[1] Proclamation No. 2974.

[2] E.g., E.O. 11810 of September 30, 1974, Continuing the Regulation of Exports.

Section 401 of the amended bill details the accountability and reporting requirements applicable to the President in connection with national emergencies. All significant orders of the President shall be filed and an index maintained of that file. Further, each Executive agency is to maintain a file and an index of all rules and regulations issued during an emergency of war. These orders, rules, and regulations are to be transmitted to the Congress. Subsection (c) requires that the President transmit to the Congress within ninety days of the end of each six month period after declaration of a national emergency or declaration of war a report of the total expenditures of the Government attributable to the exercise of powers and authorities brought into force by the declaration. A final report of all such expenditures is required within ninety days of the termination of the war or the emergency.

At the hearing on the bill, the Defense Department witness stated that the thirty day period provided in the bill as originally introduced might not be sufficient time to prepare a complete accounting of all expenditures directly attributable to an emergency declaration. The General Services Administration representative at those hearings suggested that it may be more informative as well as less onerous to require a narrative description of how emergency powers have been used, rather than a list of figures. The committee concluded that the best practical solution would be to fix a ninety day period for such reports at the end of each six month period. It would be assumed that such reports would include explanations which would identify the nature, powers and authority for the expenditures identified in this manner.

TITLE V OF THE AMENDED BILL

Section 501 provides for the repeal of provisions of seven laws which have been found to be superseded or obsolete, and section 502 for the continuation in effect of other provisions of law which have been determined to be important to Governmental operation. The texts of laws referred to in these two sections are set out in the appendixes I and II of this report, and appendixes contain other relevant portions of the statutes involved to give a more complete understanding of the scope and purpose of the laws involved. The texts of laws or portions of laws repealed or stricken as provided in section 501 are set out in Appendix I, and the texts of laws continued in force under section 502(a) of the amended bill are set out in Appendix II.

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[3] Examples are found in 37 U.S.C. 202(e) having to do with pay of certain rear admirals, or in 37 U.S.C. 407(b) having to do with dislocation allowances for members of the uniformed services.

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,Provisions To Be Repealed

Subsection (a) of section 501 of the amended bill strikes paragraph (1) of section 349(a) of the Immigration Act (8 U.S.C. 1481(a)). Section 349 concerns loss of nationality by nationals of the United States, and subsection (a)(10) provides that nationality shall be lost by persons who depart from or remain outside the jurisdiction of the United States during a war or national emergency for the purpose of evading or avoiding training and service in the Armed Forces of the United States. The Supreme Court in the case of *Kennedy* v. *Mendoza Martinez*, 372 U.S. 144 (1963) held section 349(a)(10) of the Immigration and Nationality Act to be unconstitutional because it employed the sanction of deprivation of nationality as a punishment for the offense of leaving or remaining outside the country to evade military service without affording the procedural safeguards guaranteed by the Fifth and Sixth Amendments. In this connection, the Court pointed out that this punishment cannot be imposed without a criminal trial with all its incidents and procedural safeguards including indictment, notice confrontation, jury trial, assistance of counsel, and compulsory process for obtaining witnesses. Since the subparagraph has been held invalid, the bill provides that it be stricken from section 349(a) of the Immigration and Nationality Act.

Subsection (b) of section 501 of the amended bill deletes Item 4 of section 2667(b) of Title 10. Item 4 provides that leases of non-excess property of a military department must contain a provision making the lease revocable by the section during a national emergency declared by the President. In the course of the hearings on the bill, the Committee was advised that the deletion of this provision would give the departments concerned the option of either including or not including such a requirement in their leases. The change would, therefore, make it possible for the departments to determine whether the foreseeable needs of the department would require the inclusion of such a provision.

Subparagraph (c) of section 501 repeals a joint resolution approved August 8, 1947, concerned the regulation of consumer credit. This Act ended consumer credit control under a war time executive order as of November 1, 1947. The exception contained in the Act provided that the authority could be exercised during war or national emergency after the effective date of the act. The provisions of the act are obsolete. Section 1904 of Title 12 presently empowers the President to authorize the Board of Governors of the Federal Reserve System to regulate extensions of credit.

Subsection (d) of section 501 repeals section 5(m) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(m). Subsection (m) bars the sale of products except ferrophosphorus outside the United States and possessions except as to the United States Government for military use or to its allies in the case of war or until six months after the termination of the Korean emergency. The Committee has been advised that the provisions of this subsection have no present application.

Subsection (e) of section 501 of the amended bill repeals section 1383 of Title 18 of the United States Code. This is a section which provides criminal penalties for "Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive Order of the President, by the Secretary of the Army . . ." when it appears that the individual knew of the restrictions or order and that his act was in violation thereof. This section was originally enacted as a wartime measure on March 21, 1942. In the case of *Hirabayashi* v. *United States*, 320 U.S. 81, 92 (1943), the Court held that the Act ratified and confirmed Executive Order No. 9066, 7 Fed. Reg. 1407, which was promulgated during time of war on February 14, 1942, for the declared purpose of persecuting the war by protecting national defense resources from sabotage and espionage. This was the Executive Order which formed the basis for the relocation and detention of persons of Japanese ancestry in that period. This relationship to the evacuation was even more directly discussed in the case of *Ex Parte Mitsuge Endo* 323 U.S. 283, 298 when it was pointed out that Congress had made the orders regarding the evacuation program subject to the civil penalties provided in the Act of March 21, 1942, the act upon which the codified provisions of section 1383 of Title 18 are based. Clearly, the Act was not intended to apply in normal peacetime situations. Further, by the Act of September 25, 1971, Public Law 92–128 repealed the provision of Title II of the Internal Security Act of 1950 (50 U.S.C. 811–826) the "Emergency Detention Act." The report of the Committee which accompanied that legislation (H. Rept. 92–116, 92nd Congress, 1st Session) stated:

> . . . the Committee is of the view that the Emergency Detention Act serves no useful purpose, but, on the contrary, only engenders fears and resentment on the part of many of our fellow citizens . . .

The repeal of section 1383 of Title 18 is consistent with the previous action of the Congress with reference to the above law. Since the provisions of section 1383 of Title 18 have no current purpose, they are, as a practical matter, obsolete.

Subsection (f) of section 501 strikes subsections (b), (c), (d), (e) and (f) of section 6 of the Act of February 28, 1948. An amendment to the Public Health Service Act concerning promotion of commissioned officers of the Public Health Service. The committee has been advised that these provisions now are obsolete.

Subsection (g) of section 601 repeals section 9 of the 1946 Merchant Ship Sales Act. 50 U.S.C. 1742. This section of the Sales Act concerns price adjustment for prior sales to citizens of the United States. The Committee has been advised that the section is now a nullity and no future proclamation of a national emergency could provide any authority under it. The letter from the Department of Commerce dated April 1, 1975, discussing this point is set out at the end of this report.

Continuing Authority Provided for in the Bill

As has been discussed in this report, a basic problem with emergency legislation derives from the fact that much which is authorized and much which has been done under it is really not of merely an "emergency" nature. Simply to abolish all emergency powers and dispositions on a specified date would not actually solve this problem but would ignore that in some instances this authority is vital to retain governmental functions. The Committee has been advised that the greatest part of the effort which the Executive and Legislative branches have devoted to this bill and earlier bills in the past several years has been directed toward identifying those powers and dispositions which should be preserved while the rest are abandoned. As is provided in section 502(b), it is intended that within a short time those provisions of law can be converted from the "emergency" portions of the Code in which they now appear to standard, non-emergency sections. Until that is achieved, however, the technical conditions which enable them to remain effective must be preserved. This is achieved in section 502 of the amended bill, by preserving the effect of previously issued declarations of national emergency only with respect to those specified provisions. The texts of laws referred to in section 502(a) are set forth in Appendix II of this report together with a brief explanation of the provisions involved.

Section 502(a) of the amended bill provides that the provisions of the Act will not apply to provisions of law and related powers, authority, and actions thereunder which are listed in that section. Clause 1 of the subsection lists section 5(b) of the Act of Oct. 6, 1917, the Trading With the Enemy Act. The provisions of 5(b) are presently set out in the United States Code as section 95a of Title 12 and section 5(b) of Title 50. This section concerns the regulation of transactions in foreign exchange of gold and silver, property transfers in which any foreign country or national thereof has an interest and provides for the administration of such assets or property. At the hearings on the bill and in departmental reports made to the Committee, the importance of this section as a continuing measure was emphasized. The Treasury Department pointed out that this law is important to the United States with regard to existing controls which regulate transactions with several foreign countries and their nationals. It is also important to the continuing validity of certain blockings of assets of foreign countries which are presently in effect. The State Department witness before the Committee indicated that the Department of State is concerned with the continuance of this section because it provides the basic legal authority for a number of programs of major foreign policy importance.

Clause 2 of section 602(a) of the bill as originally introduced would have continued in effect the provisions of section 673 of Title 10, which concerns the call up of members of the Ready Reserve. Since this section by its express terms could be invoked by any future emergency or where otherwise authorized by law, there would be no requirement of its continuance under the provisions of this section. Accordingly, the Committee has recommended that it be stricken and the number of the clauses in the bill be adjusted accordingly. The balance of the discussion will relate to the numbers of the clauses as are contained in the amended bill in renumbered section 502(a).

Clause 2 of 502(a) of the amended bill continues in effect the provisions of the Act of April 28, 1942, which is contained in the United States Code as section 278(b) of Title 40. This Act provides for an exception to the existing provisions of law concerning maximum rental of leases in cases relating to vital leases during a war or national emergency. At the hearings on the bill, the witness representing the General Services Administration that the continuing availability of the national emergency authority contained in this section has been found to be essential to the regular functioning of the Government and pointed out that this type of authority had proven to be of value where situations arose where the normal limitations on expenditures for rentals alterations and improvements had to be waived in the national interest. The Department further indicated that it would favor the enactment of permanent legislation granting similar alternative authority.

Clause 3 continues in effect the provisions of the Act of June 30, 1949 presently found in section 252 of Title 41 of the United States Code. This Act provides for authority to make purchases and to make contracts for property and services. Subsection (c)(1) contains an exception to a requirement of advertising such purchases or contracts where it is determined in the public interest during a period of national emergency declared by the President or by the Congress. The General Services Administration has advised the Committee that this emergency authority is presently relied upon for the award of contracts involving unilateral set asides for small business concerns. The Committee was also advised that this authority is also relied upon for partial set asides of contracts intended for labor surplus areas. It has also been used to limit certain contracts of domestic end products in the interest of improving the United States balance of payments. Presently, there is no other negotiation authority available. If this authority were terminated, awards for these purposes would have to be discontinued. For these reasons, this section has been listed among those provisions of law to be given continuing effect.

Clauses 4 and 5 of section 502(a) of the amended bill continue the authority contained in two sections of the revised statutes concerning the assignment of claims. Clause 4 lists section 3477 of the revised statutes which is set out in the Code as section 203 of Title 31. This section refers to the assignment of claims upon the United States and continues a provision that in time of war or national emergency, contracts may contain a provision that assignment of money due under a contract may not be subject to reduction or setoff for liability of the assignor as specified in the section. Clause 5 continues in effect the provisions of section 3737 of the revised statutes which is set out as Section 15 of Title 41 of the Code. This section also has to do with the assignment of claims and setoffs against the assignee and contains language similar to that found in the section referred to in Clause 4.

During the hearings, the General Services Administration witness referred to these provisions and stated that they permit claims for money due or to become due a contractor with the Government to be assigned to a bank, trust company or other financial institution. This has proven to be important in the financing of Government contracts but its usefulness may be impaired if the assignments are deemed to be subject to reductions or set off by the Government. As has been noted, under emergency authority, it is possible to provide that such assignments will not be subject to such setoffs. The continuance of this authority will make it possible for the appropriate committees to consider whether similar authority should be provided or modified by new legislation.

Clause 6 of section 502(a) of the amended bill continues the authority provided in Public Law 85–804 as enacted on August 28, 1958. (50 U.S.C. 1431–1435.) This law permits departments or agencies exercising functions in connection with the national defense to deal with unusual contract situations. This permits the correction of mistakes in contracts, the formalization of informal commitments by the Government, and the indemnification of contractors for unusually hazardous risks and other extraordinary contractual relief. At the hearings on the bill, it was pointed out that the Commission on Government Procurement recommended to the Congress in 1972 that the authority in Public Law 85–804 be made available under permanent and generally applicable law rather than being dependent upon the existence of a state of war or national emergencies. On page 9 of Vol. 4 of the Report of that Commission, the Commission summarized its recommendations in connection with this Public Law and indicated that it concluded that the authority should be extended to all executive agencies subject to the statutory controls now contained in the Act and to controls and criteria specified in the regulations established by the President. The report of the Commission in chapter 4 discussed in some detail the subject of equitable and special management powers under Public Law 85–804. The continuance of the authority as provided in this section of the bill will permit the appropriate committees of Congress to consider this aspect of the recommendations of the Procurement Commission.

Item 7 continues the authority provided in section 2304(a)(1) of Title 10 providing for an exception to the requirement for formal advertising in connection with certain contracts. This is identical language presently contained in the Armed Services Procurement Act to that contained in Clause 1 of subsection (c) of section 302 of the Act of June 30, 1949, which is also listed in this subsection of the bill in Clause 3. The testimony at the hearing was that this authority is important in that it is used to provide for contracts for small businesses and to place contracts for labor surplus areas and disaster areas.

Item 8 extends the emergency authority provided in sections 3313, 6386(c) and 8313 of Title 10, which provide authority for the suspension of provisions of law requiring mandatory retirement or separation of officers. In reports to the Committee and testimony in connection with this bill, the Committee was advised that this authority makes it possible to suspend such requirements as they relate to some 690 members of the Armed Forces missing in action in Southeast Asia. The emergency authority permits the Armed Services to retain them in the Armed Services until they are returned or are accounted for.

Committee Vote

On May 21, 1975, the Full Committee on the Judiciary approved the bill H.R. 3884 by voice vote.

Cost

(Rule XIII (7)(a)(1) of the House Rules)

The bill does not provide for any specific new programs. As has been outlined in the report, after a transition period of two years it would terminate all powers and authorities under existing emergencies, and then also define procedures and restrictions which would apply in the event of the declaration of future emergencies. Thus the bill contemplates governmental operations under regular law except as is otherwise provided in the bill relating to emergency statutes. Under these circumstances it is not possible to predict what future cost impact the provisions of this bill would have on the Government.

CONCLUSION

The Committee has concluded that the facts developed in the hearings on the bill and as outlined in this report demonstrate the need for legislative action. The testimony by representatives of departments in connection with this subject, and the reports received from those departments have shown that there is general agreement that the time has come for positive and constructive legislative action in the manner provided for in this bill. It is recommended that the amended bill be considered favorably.

ANALYSIS OF THE BILL

TITLE I—TERMINATION OF EXISTING EMERGENCIES

SEC. 101 terminates powers and authorities under existing emergencies. The subcommittee amendment provides a two year delay in effective date in lieu of the one year date originally stated in the bill. The Congress would have this period to enact permanent law where needed. The section defines "any national emergency in effect" as one declared by the President. The committee amendment would strike the words "pursuant to a statute authorizing him to declare a national emergency". Apparently, not all previous emergencies were declared pursuant to a specific statute.

TITLE II—FUTURE NATIONAL EMERGENCIES

SEC. 201 authorizes the President to proclaim a national emergency and requires the proclamation to be transmitted to the Congress and published in the *Federal Register*. Powers and authorities to be exercised under the emergency are to be effective only when the President declares such an emergency and only in accordance with the provisions of this bill.

SEC. 202 provides for termination of such emergencies either by the Congress by concurrent resolution or by Presidential proclamation. This section spells out in some detail the procedures to be followed by the Congress to consider such concurrent resolutions. The resolutions would be considered at six month intervals. These procedures of the section are to be deemed a part of the rules of each House.

TITLE III—DECLARATIONS OF WAR

The single section 301 contained in this title of the bill as originally introduced would provide that when Congress declares war, provisions of law providing for the exercise of powers and authorities in time of war are to be effective from the date of that declaration. The subcommittee amendment is to strike Title III and renumber subsequent titles and sections. It was concluded that the language of the title was unnecessary.

TITLE IV—EXERCISE OF EMERGENCY POWERS

Title IV is re-numbered as Title III, and Sec. 401 becomes Sec. 301. This section provides that upon the declaration of the national emergency, the President will be required to specify which emergency statutes are to be utilized.

TITLE V—AMENDED TITLE (IV)—ACCOUNTABILITY AND REPORTING

SEC. 501 (401) When the President declares a national emergency or the Congress declares war, the President shall maintain a file and index of all Presidential orders and each Executive agency shall maintain a file of all rules and regulations issued during the emergency or war. These orders, rules and regulations are to be transmitted to the Congress. The section requires that after the declaration of a national emergency or declaration of war, the President shall transmit to the Congress 90 days after each six month period a report of total expenditures which are attributable to powers and authorities exercised under such declarations. A final report is required 90 days after the termination of the emergency or war.

TITLE VI (TITLE V)—REPEALS AND CONTINUATION OF STATUTES

[REPEALS]

SEC. 601 (501) repeals the following statutes:

1. Paragraph 10 of section 349(a) of the Immigration and Nationality Act providing for the expatriation of persons remaining outside the jurisdiction of the United States in time of war or national emergency to avoid service in the military.
2. Clause 4 of section 2667(b) of Title 10 of the United States Code requiring that leases of non-excess property of a military department must include a provision making the lease revocable during a national emergency.
3. A joint resolution approved August 8, 1947, concerning the regulation of consumer credit which contains an exception that the authorities concerning such regulation could be exercised during war or national emergency.
4. Subsection (m) of Section 5 of the Tennessee Valley Authority Act of 1933 which bars the sale of Tennessee Valley Authority products outside of the United States except to the Government for military use or its allies in case of war or until six months after the termination of the Korean emergency.
5. Section 1383 of Title 18 providing criminal penalties for persons entering, remaining in, leaving or committing any act in a military area or military zone.
6. Subsections (b), (c), (d), (e), and (f) of Section 6 of the Act of February 28, 1948, an amendment to the Public Health Service Act concerning the promotion of Public Health Service officers, now deemed obsolete.

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[CONTINUATION]

Section 602 (502) provides that the provisions of the Act will not apply to listed provisions of law and related powers and authorities and actions thereunder, as follows:

1. Section 5(b) of the Act of October 6, 1917, the Trading With the Enemy Act. The section concerns the regulation of transactions in foreign exchange in gold and silver, property transfers in which any foreign country or national thereof has an interest and provides for the liquidation of assets or property.

2. The bill would have continued the effect of the provisions of section 673 of Title 10 concerning the call-up of the Ready Reserve. The subcommittee amendment is to strike this and to re-number the balance of the clauses in the subsection.

3. (Clause 2) continues in effect the provisions of the Act of October 28, 1942, making an exception to existing provisions of law fixing maximum rental in leases deemed vital during a war or national emergency.

4. (Clause 3) The provisions of the Act of June 30, 1949, providing authority to make purchases and make contracts for property and services with an exception for the requirement for advertising and provision for negotiated contracts where it is determined in the public interest during a period of national emergency declared by the President or by the Congress. This is the present authority for set-asides for small business and for contracts in labor surplus areas. It also has been utilized to limit certain contracts to domestic end products to improve balance of payments.

5. (Clause 4) The provisions of section 3477 of the Revised Statutes concerning the assignment of claims during war or national emergency. Contracts may contain a provision that assignments of claims will *not* be subject to set-off for assignor liability. This section is important in obtaining bank financing.

6. (Clause 5) The provisions of section 3737 of the Revised Statutes. This section also has to do with the assignment of claims and set-offs for assignor liability and contains language similar to that found in the foregoing section.

(The subcommittee amendment adds three references.)

6. New Clause 6 continues in effect the provisions of Public Law 85–804 permitting departments or agencies exercising functions in connection with the national defense to deal with unusual contract situations subject to standard regulations. This includes correction of mistakes in contracts, formalization of informal commitments, indemnification of contractors for unusually hazardous risks and other extraordinary relief.

7. New Clause 7 would continue in effect the provisions of section 2304(a)(1) of Title 10 which is a parallel provision to that referred to in this section in original clause 4. It is similarly used to provide for contracts for small business and to place contracts in labor surplus areas and disaster areas.

8. New Clause 8 continues in effect the provisions of sections 3313, 6386(c) and 8313 of Title 10, making exceptions to the mandatory separation or retirement of officers during an emergency. These sections may have application to approximately 691 officers now listed as missing in action.

STATEMENT UNDER CLAUSE 2(1)(3), AND CLAUSE 2(1)(4) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

A.

Oversight Statement

This report embodies the findings and recommendations of the Subcommittee on Administrative Law and Governmental Relations pursuant to its oversight responsibility over national emergencies and procedures relating thereto under Rule VI(b) of the Rules of the Committee on the Judiciary, and the committee determined that legislation should be enacted as set forth in the amended bill.

B.

Budget Statement

Clause 2(1)(3)(B) of Rule XI is not yet applicable because as is stated in the report of the Committee on the Budget (House Report No. 94–25, 94th Cong., 1st Sess.) section 308(a) of the Congressional Budget Act of 1974 will not be implemented during the current session.

C.

Estimate of the Congressional Budget Office

No estimate or comparison was received from the Director of the Congressional Budget Office as referred to in subdivision (C) of Clause 2(1)(3) of House Rule XI.

D.

Oversight Findings and Recommendations of the Committee on Government Operations

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(1)(3) of House Rule XI.

Inflationary Impact

In compliance with clause 2(1)(4) of House Rule XI it is stated that this legislation will have no inflationary impact on prices and costs in the operation of the national economy. The bill provides for termination of Governmental dependence upon emergency statutes and for procedures to be followed in the event of future emergencies. It does not provide for any new programs.

TEXT OF STATUTE TO BE REPEALED

In compliance with paragraph 1 of clause 3 of rule XIII of the Rules of the House of Representatives, the text of the statute which is proposed to be repealed by the bill is shown as follows:

Paragraph (10) of section 349(a) of the Immigration and Nationality Act (Act of June 27, 1952, ch. 477, 66 Stat. 163; 8 U.S.C. 1481 (10)) * * * ; or

(10) departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.

Paragraph (4) of section 2667 (b) of title 10, United States Code

* * * * * * *

(4) must be revocable by the Secretary during a national emergency declared by the President; and

* * * * * * *

The Joint Resolution approved August 8, 1947 entitled "Joint Resolution to authorize the temporary continuation of regulation of consumer credit" (Act of Aug. 8, 1947, ch. 517, 61 Stat. 921; 12 U.S.C. 249).

JOINT RESOLUTION To authorize the temporary continuation of regulation of consumer credit

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That after November 1, 1947, the Board of Governors of the Federal Reserve System shall not exercise consumer credit controls pursuant to Executive Order Numbered 8843, and no such consumer credit controls shall be exercised after such date except during the time of war beginning after the date of enactment of this joint resolution or any national emergency declared by the President after the date of enactment of this joint resolution.

Section 5(m) of the Tennessee Valley Authority Act of 1933, as amended (Act of May 18, 1933, ch. 32, § 5m, 48 Stat. 61, as amended; 16 U.S.C. 831d(m))

* * * * * * *

(m) No products of the Corporation except ferrophosphorus shall be sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war or, until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, or until such earlier date or dates as the Congress by concurrent resolution or the President may provide but in no event after April 1, 1953, to nations associated with the United States in defense activities.

Section 1383 of Title 18, United States Code.

§ 1383. Restrictions in military areas and zones.

Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive order of the

President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.

Subsections (b), (c), (d), (e), and (f) of Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administraiton and for other purposes", (Act of February 28, 1948, ch. 83, 62 Stat. 45; 42 U.S.C. 211b)

* * * * * * *

(b) Except as provided in subsection (d) of this section, no promotion shall be made under section 210 of the Public Health Service Act, as amended by this Act, prior to July 1, 1948. Until that date officers of the Regular Corps may receive temporary promotions to higher grades with the pay and allowances thereof pursuant to section 210 (a)(1) of the Public Health Service Act, in force prior to the enactment of this Act, notwithstanding the termination, prior to such date, of the war and of the national emergencies proclaimed by the President. Any officer holding, on June 30, 1948, an appointment pursuant to such section to a higher temporary grade shall continue in such grade until such appointment is terminated, as the President may direct.

(c) Effective as of the date enactment of this Act, each officer of the Regular Corps on such date, in addition to the credit he has under preexisting legislation for purposes of promotion, shall be credited with three years of service.

(d)(1) Officers of the Regular Corps who have, or who on or before July 1, 1948, will have, the years of service prescribed in pargraph (2) of section 210(d) of the Public Health Service Act, as amended by this Act, for promotion to the senior assistant, full, or senior grade, shall be recommended to the President for such promotion, to be effective as of July 1, 1948, whether or not vacancies exist in such grade. Such promotions shall be made without examination, except that no promotions shall be made to the senior grade or any grade immediately below a restricted grade until the officer is found qualified for promotion pursuant to subsection (c) of section 210 of the Public Health Service Act, as amended by this Act. No promotion shall be made pursuant to this paragraph to any grade in any professional category if such grade has been made a restricted grade pursuant to subsection (b) of section 210 of the Public Health Service Act, as amended by this Act. For purposes of seniority, an officer promoted under this paragraph shall be credited with the years of service in the grade to which promoted equal to the excess of his years of service on the date of promotion over the years of service required for promotion to such grade under paragraph (2) of section 210(d) of the Public Health Service Act, as amended by this Act.

(2) Officers in the junior assistant grade in the Regular Corps who have, or who on or before July 1, 1948, will have four or more years of service in the junior assistant grade, shall be recommended to the President for promotion to the assistant grade, to be effective as of July 1, 1948, without examination and whether or not vacancies exist in such grade. For purposes of promotion and seniority in grade, an

officer promoted under this paragraph shall be credited with the years of service equal to the excess of his years of service on the date of promotion over four years.

(e) For purposes of seniority, any officer of the Regular Corps of the Public Health Service on the date of enactment of this Act shall be considered as having had service in the grade which he holds on such date equal to the excess of the service credited to him for promotion purposes over the length of service required under section 210(d)(2), as amended by this Act, for promotion to such grade.

(f) Except as provided in subsection (d) of this section, the provisions of this section shall not, prior to July 1, 1948, affect the term or tenure of office (including any office held under temporary promotion) of any commissioned officer of the Service in office upon the date of the enactment of this Act.

Section 9 of the Merchant Marine Sales Act of 1946 (Act of Mar. 8, 1946, ch. 82, 60 Stat. 45; 50 App. U.S.C. 1741).

ADJUSTMENT FOR PRIOR SALES TO CITIZENS

SEC. 9. (a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended:

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the *Federal Register* under section 3(c) of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V (including section 504) or title VII of the Merchant Marine Act, 1936, as amended.

(b) Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment. If such payment was less

than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of 3½ per centum per annum.

(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act to the extent not credited under paragraph (1).

(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of 3½ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act, and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8.

(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c) (1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c)(1). If, after

making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

(c) An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect that—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of enactment of this Act for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b) (6) shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (5) and (6) shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act;

(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

(d) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act.

Changes in Existing Law

In compliance with paragraph 2 of clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 349(a) of the Immigration and Nationality Act (Act of June 27, 1952, ch. 477, 66 Stat. 163; 8 U.S.C. 1481.

* * * * * * *

CHAPTER 3—LOSS OF NATIONALITY

LOSS OF NATIONALITY BY NATIVE-BORN OR NATURALIZED CITIZEN

SEC. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

(1) obtaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person: *Provided*, That nationality shall not be lost by any person under this section as the result of the naturalization of a parent or parents while such person is under the age of twenty-one years, or as the result of a naturalization obtained on behalf of a person under twenty-one years of age by a parent, guardian, or duly authorized agent, unless such person shall fail to enter the United States to establish a permanent residence prior to his twenty-fifth birthday: *And provided further*, That a person who shall have lost nationality prior to January 1, 1948, through the naturalization in a foreign state of a parent or parents, may, within one year from the effective date of this Act, apply for a visa and for admission to the United States as a nonquota immigrant under the provisions of section 101(a)(27)(E); or

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof; or

(3) entering, or serving in, the armed forces of a foreign state unless, prior to such entry or service, such entry or service is specifically authorized in writing by the Secretary of State and the Secretary of Defense: *Provided*, That the entry into such service by a person prior to the attainment of his eighteenth birthday shall serve to expatriate such person only if there exists an option to secure a release from such service and such person fails to exercise such option at the attainment of his eighteenth birthday; or

(4)(A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if he has or acquires the nationality of such foreign state; or (B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or

(5) voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

(6) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(7) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(8) deserting the military, air, or naval forces of the United States in time of war, if and when he is convicted thereof by court martial and as the result of such conviction is dismissed or dishonorably discharged from the service of such military, air, or naval forces: *Provided*, That, notwithstanding loss of nationality or citizenship under the terms of this or previous laws by reason of desertion committed in time of war, restoration to active duty with such military, air, or naval forces in time of war or the reenlistment or induction of such a person in time of war with permission of competent military, air, or naval authority shall be deemed to have the immediate effect of restoring such nationality or citizenship heretofore or hereafter so lost; or

(9) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of Title 18, or willfully performing any act in violation of section 2385 of Title 18, or violating section 2384 of Title 18 by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction [; or].

[(10) departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.]

Section 2667(b) of Title 10, United States Code.

§ 2667. Leases: non-excess property

* * * * * * *

(b) A lease under subsection (a)— * * * *

(3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest; *and*

[(4) must be revocable by the Secretary during a national emergency declared by the President; and]

[(5)]*(4)* may provide, notwithstanding section 303b of Title 40 or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

* * * * * * *

Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration and for other purposes", (Act of Feb. 28, 1948 ch. 83, 62 Stat. 45: 42 U.S.C. 211b)

SEC. 6. (a) Section 210 of such Act is amended to read:

* * * * * * *

[(b) Except as provided in subsection (d) of this section, no promotion shall be made under section 210 of the Public Health Service Act, as amended by this Act, prior to July 1, 1948. Until that date officers of the Regular Corps may receive temporary promotions to higher grades with the pay and allowances thereof pursuant to section 210 (a) (1) of the Public Health Service Act, in force prior to the enactment of this Act, notwithstanding the termination, prior to such date, of the war and of the national emergencies proclaimed by the President. Any officer holding, on June 30, 1948, an appointment pursuant to such section to a higher temporary grade shall continue in such grade until such appointment is terminated, as the President may direct.]

[(c) Effective as of the date of the enactment of this Act, each officer of the Regular Corps on such date, in addition to the credit he has under preexisting legislation for purposes of promotion, shall be credited with three years of service.]

[(d) (1) Officers of the Regular Corps who have, or who on or before July 1, 1948, will have, the years of service prescribed in paragraph (2) of section 210(d) of the Public Health Service Act, as amended by this Act, for promotion to the senior assistant, full, or senior grade, shall be recommended to the President for such promotion, to be effective as of July 1, 1948, whether or not vacancies exist in such grade. Such promotions shall be made without examination, except that no promotions shall be made to the senior grade or any grade immediately below a restricted grade until the officer is found qualified for promotion pursuant to subsection (c) of section 210 of the Public Health Service Act, as amended by this Act. No promotion shall be made pursuant to this paragraph to any grade in any professional category if such grade has been made a restricted grade pursuant to subsection (b) of section 210 of the Public Health Service Act, as amended by this Act. For purposes of seniority, an officer promoted under this paragraph shall be credited with the years of service in the grade to which promoted equal to the excess of his years of service on the date of promotion over the years of service required for promotion to such grade under paragraph (2) of section 210(d) of the Public Health Service Act, as amended by this Act.

(2) Officers in the junior assistant grade in the Regular Corps who have, or who on or before July 1, 1948, will have four or more years of service in the junior assistant grade, shall be recommended to the President for promotion to the assistant grade, to be effective as of July 1, 1948, without examination and whether or not vacancies exist in such grade. For purposes of promotion and seniority in grade, an officer promoted under this paragraph shall be credited with the years

of service equal to the excess of his years of service on the date of promotion over four years.]

[(e) For purposes of seniority, any officer of the Regular Corps of the Public Health Service on the date of enactment of this Act shall be considered as having had service in the grade which he holds on such date equal to the excess of the service credited to him for promotion purposes over the length of service required under section 210(d)(2), as amended by this Act, for promotion to such grade.]

[(f) Except as provided in subsection (d) of this section, the provisions of this section shall not, prior to July 1, 1948, affect the term or tenure of office (including any office held under temporary promotion) of any commissioned officer of the Service in office upon the date of the enactment of this Act.]

COMMENTS OF EXECUTIVE DEPARTMENTS AND AGENCIES

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., December 12, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of October 17, 1974 to me requesting an expression of my views concerning S. 3957, entitled "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies." It also responds to a similar letter of September 27, 1974, concerning H.R. 16668 and H.R. 16743, two related bills.

S. 3957 was introduced in the Senate as a result of the studies conducted by the Senate Select Committee on National Emergencies and Delegated Emergency Powers. It was reported by the Chairman of the Senate Committee on Government Operations, without amendment and without hearings.

Subsequently, representatives of this Office, the Department of Justice, and other agencies of the Executive Branch worked with staff members of the Senate in the preparation of an amendment in the form of a substitute for S. 3957, as reported. That substitute, with one unacceptable provision, was passed by the Senate and is now before your Committee.

Section 202(a) and (b) clearly contemplate that any of the national emergencies declared by the President will continue until terminated by him or by concurrent resolution of the Congress. This accurately reflects the approach agreed upon in discussions with the Senate staff, as described above. However, Section 202(c) injects, presumably as a technical error, the concept that a concurrent resolution could be considered to continue as well as terminate a national emergency. We strongly urge that this subsection be modified by deleting any reference to continuation of national emergencies by concurrent resolution. Such a change, along with any other necessary related technical changes in the subsection, would provide the essential clarification required to make these provisions consistent with those agreed upon and reflected in Section 202(a) and (b). If modified in the foregoing manner, S. 3957 would be acceptable to the Administration.

The provisions of H.R. 16668 and H.R. 16743 are quite similar to the provisions of S. 3957, as reported in the Senate. Many of the provisions of those bills are objectionable. Those provisions are identified and discussed in the report which the General Counsel of the Department of the Treasury sent you on November 12, 1974. We associate ourselves with the views expressed in that report and recommend against the enactment of either H.R. 16668 or H.R. 16745, as introduced.

Sincerely,

Roy L. Ash, *Director.*

The General Counsel of the Treasury,
Washington, D.C., November 12, 1974.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

Dear Mr. Chairman: Reference is made to your requests for the views of this Department on H.R. 16668, H.R. 16743, and S. 3957, similar bills, "National Emergencies Act."

H.R. 16668 would terminate all national emergencies in effect at the time of its enactment. H.R. 16743 and S. 3957 would both terminate all powers and authorities bestowed upon governmental bodies due to past national emergencies, although S. 3957 would exempt certain statutes from the application of its provisions. All three bills would establish procedures for Presidential declarations of future national emergencies. H.R. 16668 and H.R. 16743 would provide for the automatic termination of such emergencies after 180 days, absent Congressional action, while S. 3957 would require Congress to meet within six months after the declaration of such an emergency to determine whether such emergency should be terminated by concurrent resolution.

H.R. 16668, H.R. 16743, and S. 3957 are variations of the "National Emergencies Act" prepared by the Senate Special Committee on the Termination of the National Emergency following hearings pertaining to the desirability of repealing existing national emergencies. No hearings have been held, however, on any version of the "National Emergencies Act."

The provisions of both H.R. 16668 and H.R. 16743 are of serious concern to this Department. S. 3957, on the other hand, would present few problems. The major objections of the Department relate to those provisions in section 8 of H.R. 16668 and in section 601 of H.R. 16743 which would repeal 12 U.S.C. 95 and 12 U.S.C. 95a (section 5(b) of the Trading with the Enemy Act). The Department opposed the repeal of these statutes in its report to the Senate Special Committee on the Termination of the National Emergency and continues to be opposed.

12 U.S.C. 95 relates to limitations and restrictions on the business of members of the Federal Reserve System "during such emergency period as the President . . . may prescribe." The section was enacted

March 9, 1933, and had specific reference to declaration of the "bank holiday" proclaimed by the President on March 6, 1933. The statute, although passed to ratify the action of the President in closing the banks, is not obsolete. The language of the section invests the Executive with the authority to regulate or suspend the activities of all banks that are members of the Federal Reserve System—which would include all national banks—during an emergency. The Department is of the opinion that the authority to so act in times of financial crisis is necessary. Thus, 12 U.S.C. 95 should be retained as an emergency statute, as would be allowed by S. 3957.

12 U.S.C. 95a, which embodies section 5(d) of the Trading With the Enemy Act, provides for the regulation by the President during periods of war or national emergency of banking transactions, gold and silver activities, transactions in foreign exchange, and the exercise of rights in property subject to American jurisdiction in which foreign nationals have an interest. Section 5(b) of the Trading with the Enemy Act is also codified in 50 U.S.C. App. 5(b). Under the authority of section 5(b), regulations have been issued under which controls are maintained in implementation of existing policies with respect to North Korea, North Vietnam, and Cuba, and some $80 million of Chinese assets have been frozen in order to be available in the settlement of claims of American citizens for the expropriation of their property in mainland China.

The Department believes that section 5(b) of the Trading With the Enemy Act is not obsolete and not only should not be repealed, but should be excluded from the provisions of the bills as a whole, as is provided by S. 3957. Section 5(b) should be available to deal with financial emergencies which may arise in the future.

Furthermore, inclusion of section 5(b) under section 2 of H.R. 16668 and under section 101 of H.R. 16743 would seriously affect the negotiating position of the United States with regard to the existing controls, discussed previously, which regulate transactions with several foreign countries and their nationals and which freeze significant amounts of Chinese and Cuban assets to be held for an eventual settlement of the claims of United States citizens whose property in Communist China and Cuba has been seized without compensation. In this regard, it also appears that constitutional problems might arise with respect of the validity of continued blockings of assets of foreign countries when all national emergencies or authorities thereunder have been terminated, as the bills contemplate. We believe that no definitive Congressional action should be effected with respect to section 5(b) through the vehicle of any of these bills. It is essential that before any action is taken the appropriate committees closely study its potential impact on section 5(b) of the Trading With the Enemy Act. S. 3957 would exempt section 5(b) from its provisions and would enable such a study to be made, thus satisfying our objections.

There are several other problems with H.R. 16668 and H.R. 16743 which also seriously concern the Department. Section 2 of H.R. 16668 would terminate all national emergencies in effect on the date of enactment, which we understand to be four in number, 270 days after enactment, and section 101 of H.R. 16743 would terminate all powers and authorities possessed by the Executive branch due to such emergencies within the same period. This nine month period was intended to give the Committees of the Congress an opportunity to enact into permanent legislation those existing programs which the Congress decides should be preserved. S. 3957 provides for a one year period to be used for the same purpose.

The Department feels that nine months, or even one year, is much too brief a time for the Congress to deal with the significant problems which might arise with respect to those statutes appropriately covered by the bills. For example, American importers have relied extensively on the practice of warehousing merchandise in Customs bonded warehouses for periods in excess of the initial statutory periods afforded by sections 491, 557, and 559 of the Tariff Act of 1930. Such extensions have been made possible by Customs regulations authorized by Proclamation 2948 which President Truman issued under the authority of section 318 on the Tariff Act of 1930 (19 U.S.C. 1318), an emergency statute. Due to the extensive reliance on these Customs regulations in the past, a statutory replacement for the existing authority conferred on this Department by Proclamation 2948 will be recommended. However, given the nature of the legislative process and the multitude of other legislative programs of current importance, it is unlikely that the grace periods provided by these bills would be sufficiently long for the enactment of such legislation. Consequently, the Department recommends that the grace periods in all three bills be substantially lengthened.

Section 5 of H.R. 16668 and section 402 of H.R. 16743, dealing with future national emergencies, would provide that such emergencies are automatically terminated six months after declaration unless continued to a specified date by concurrent resolutions. Section 5 of H.R. 16668 would further provide that no concurrent resolution extending the termination date of a national emergency shall be valid if agreed to more than ten days before the original expiration date. The Department believes that these termination provisions are undesirable. Instead, it would be preferable to adopt the termination procedure of S. 3957, which provides that future emergencies proclaimed by the President to deal with the highly significant national and international problems justifying such a declaration of national emergency should continue unless declared terminated by a concurrent resolution of the Congress or by a Presidential proclamation.

Section 6 of H.R. 16668 would provide for the recordation of rules and regulations promulgated during a national emergency by the Executive and for the transmission of such rules and regulations to the Congress at the end of such emergency. Section 501 of H.R. 16743 would provide that orders as well as rules and regulations should be transmitted to the Congress as soon as practicable after issuance. Section 501 of S. 3957 would provide that only significant orders as well as rules and regulations be transmitted to Congress promptly. The Department agrees with the principle of these sections; indeed, virtually all such documents of general applicability are in fact published in the *Federal Register*. However, as drafted, section 501 of H.R. 16743 is so broad as to require every minute action taken under emergency powers to be reported in this fashion, including those with no policy significance whatsoever. This would impose an unworkable burden without commensurate benefit on the Executive branch.

In addition to the above, the Department would like to make the following technical comments: (1) It would appear that the word "if" should be deleted from the fifth line of section 403(a) of H.R. 16743 as superfluous. (2) Section 8 of H.R. 16668 and section 601 of H.R. 16743 list as being repealed 50 U.S.C. 9(e), which does not seem to exist. (3) Although all three bills refer to "12 U.S.C. 95(a)," the correct citation for the section is "12 U.S.C. 95a." (4) H.R. 16668 and H.R. 16743 would repeal certain sections of the United States Code which have not been codified into statutory law and are merely prima facie evidence of such law. To the extent that the law in these fields should be repealed, it would be preferable for the language of the bills to refer to the basic statutes which are involved.

As a result of the above, the Department has strong objections to H.R. 16668 and H.R. 16743 as drafted. S. 3957, however, would satisfactorily deal with all the aforementioned problems which this Department has with the other two bills. Consequently, the Department recommends favorable consideration of S. 3957 in lieu of action on H.R. 16668 or H.R. 16743.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to the Committee.

Sincerely yours,

RICHARD R. ALBRECHT,
General Counsel.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., December 24, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for an expression of the views of the Department of Defense on S. 3957, 93rd Congress, an Act "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

Although the Department of Defense participated in comprehensive studies of legislation relating to existing emergencies, no formal hearings were held in the Senate on S. 3957, and the Department of Defense did not have an opportunity to make known its views on the bill itself before action by the Senate. For this reason it is hoped that the comments expressed herein will be carefully considered by your Committee. In the event you plan to hold hearings and desire the appearance of a representative of this Department, I would be pleased to make one available.

S. 3957 would terminate, one year after its enactment, any authority conferred on an Executive or other federal agency by law or Executive order as a result of the existence of a state of national emergency on the day before the termination date. The bill would authorize the President, upon certain findings, to proclaim the existence of a future national emergency but would require the proclamation to be transmitted to Congress and published in the *Federal Register*. Such a future national emergency would terminate upon a concurrent resolution by Congress or by a proclamation of the President. Thus, a future national emergency could be terminated by either Congress or the President.

As a prerequisite to the exercise of any powers or authorities made available by statute for use in the event of an emergency, the bill would require the President to specify the provisions of law under which he or other officials of the Government propose to act.

Enumeration of such powers and authorities would be required to be transmitted to Congress and published in the *Federal Register*. Further, the President would be required to maintain a file and index of all significant presidential orders and proclamations and each federal agency would be required to maintain a file or index of all rules and regulations issued during future national emergencies. Copies of all such presidential and federal agency issuances would be required to be transmitted to Congress promptly.

World and national conditions have changed since President Truman officially proclaimed the state of national emergency in 1950 incident to the commencement of hostilities in Korea. Many authorities which were used then for the first time were regarded as extraordinary. Since then, experience has demonstrated a need for these authorities in the regular conduct of the day-to-day operations of the Department of Defense. The desirability of terminating existing states of emergency is recognized and no objection to their termination is entertained by the Department of Defense. However, there are certain continuing needs, outlined below, which are accommodated by the existing national emergency proclaimed by President Truman in 1950 but which are not specifically provided for in S. 3957 as passed in the Senate.

First, there are 981 members of the armed forces who are still missing as a result of their participation in the recent hostilities in Southeast Asia. Although the Department of Defense is making every effort to resolve the uncertain status of these men, several factors have hampered this effort so that it is not possible to predict the exact date by which their status will be finally determined. One of these factors is the decree of a Federal court in a case styled *McDonald* v. *McLucas*, U.S.D.C., S.D.N.Y., 73 Civ. 3190, which precludes the Secretaries of the military departments from changing the status of those now classified as missing in action to killed in action until the primary next-of-kin are afforded an opportunity to attend a hearing with counsel to present whatever evidence they deem relevant and to examine service files. Petition for review of this decision is now pending before the U.S. Supreme Court. In the meantime only the emergency authority of 10 U.S. Code 3313, 6386(c) and 8313 authorizes the suspension of mandatory separation and retirement requirements which would otherwise be applicable to allow some of these members to remain in the armed forces until they return or are accounted for.

Whether or not their situation is viewed as warranting continuation of a national emergency, it would be inequitable to force their separation or retirement while they are in a missing status.

In the field of personnel administration, the emergency authority of 10 U.S.C. 3444 and 8444 has been used to grant relief, by way of temporary appointments, to officers in the chaplain, judge advocate and medical fields who, because of constructive service credit in their specialties, are considered for permanent promotion earlier than their line officer counterparts and whose separation for failure of promotion might become mandatory under conditions inconsistent with the needs of the armed forces or fairness to the officers. Legislation which would, among other things, provide a solution in permanent law for this problem has been introduced at the request of the Department of Defense in the House of Representatives (H.R. 12405 and H.R. 12505) and hearings have begun on both of the bills involved. However, the legislative changes which these bills would effect are so extensive that it would not be realistic to expect enactment in this Congress or early in the next.

In addition to these problems which would result from allowing the emergency authority now provided by 10 U.S.C. 3444 and 8444 to lapse, the President, as commander-in-chief of the armed forces, would have no authority to grant temporary appointments to truly exceptional officers of the Army or Air Force. For example, the President used this authority to extend a temporary appointment to the next higher grade to the Air Force astronauts who successfully completed suborbital or orbital flights. Continuation of this latitude is needed so that exceptional individual contributions can still be recognized through temporary appointments.

Termination of emergency authority under 10 U.S.C. 3444 and 8444 would also deny to the Army and Air Force the only authority available in some cases to appoint alien doctors as officers to meet increasingly critical shortages of military medical personnel.

Termination of the 1950 national emergency would also terminate entitlement to disability retirement or separation benefits under 10 U.S.C. 1201 and 1203 for members with less than 8 years of service whose disability, although incurred in line of duty while on active duty, was not the proximate result of the performance of active duty. Imposition of this limitation—which would affect only the junior officers and enlisted men—is particularly untimely when the armed forces are endeavoring to meet their manpower needs through voluntary means. Continuation of the authority to retire or separate military personnel with less than 8 years of service who become unfit for further service by reason of a disability incurred while in line of duty, is needed as part of the military disability system.

Termination of the national emergency would also terminate the authority of the Department of Defense (and certain other agencies) under Public Law 85–804 (50 U.S.C. 1431–1435) to correct mistakes in contracts, to formalize informal commitments, to indemnify contractors against losses or claims resulting from unusually hazardous risks to which they might be exposed during the performance of a contract and for which insurance, even if available, would be prohibitively expensive, and to grant other extraordinary contractual relief. The Commission on Government Procurement, established by Public Law 91–129, has recommended that the authorizations of P.L. 85–804 be made available generally rather than being dependent upon the existence of a state of war or national emergency. But, here also, enactment of the Commission's recommendation in the near future does not appear likely.

S. 3957 would adversely affect defense contracting in another way, that is, in denying the emergency exception to the requirement for advertising procurements not otherwise authorized to be negotiated. Cf. 10 U.S.C. 2304(a)(1). This exception is now narrowly limited in its application by the pertinent Armed Services Procurement Regulation (32 CFR 3.201), but its application affects major social and economic policies—the policies to favor labor surplus and disaster areas and small business and to achieve a balance of payments favorable to the United States.

Continuation of several emergency authorities governing personnel administration in the naval service is also needed. These authorities include 10 U.S.C. 5231(c), which suspends existing limitations on the number of admirals and vice admirals of the Navy. If this authority is not continued, the Navy would lose approximately one half of its three- and four-star admirals. Similarly, 10 U.S.C. 5232(b) suspends existing limitations on lieutenant generals of the Marine Corps. If this authority is not continued, the Marine Corps would lose five of the currently authorized seven lieutenant generals. Section 5711(b) of Title 10 authorizes the suspension of the statutory limit of 5% below-the-zone selections specified in section 5707(c). Continuation of the authority provided in 10 U.S.C. 5785(b) is needed to suspend time-in-grade Navy and Marine Corps requirements for promotion to all grades except lieutenant and lieutenant commander. The statute is also the authority for suspension of the mandatory line fraction for promotion of staff corps officers. Section 5787 of Title 10 provides for temporary promotions in the Navy. Failure to retain this authority would require approximately 650 limited duty officers in the grade of lieutenant commander to revert to the grade of lieutenant. Discontinuance of this authority would also require Senate confirmation of all promotions to lieutenant (junior grade).

In view of the need for continuation of the authorities referred to above, the Department of Defense recommends that any legislation terminating emergency powers except the cited statutes from its effect to preserve the substantive provisions which are now needed but which would be lost by termination of the 1950 national emergency.

In general, the Department of Defense is in accord with the S. 3957 goal of repealing obsolete or unnecessary emergency laws. Therefore, subject to the foregoing reservations and recommendations, this Department does not object to enactment of S. 3957.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this letter for the consideration of the Committee.

Sincerely,

Martin R. Hoffmann.

Department of State,
Washington, D.C., November 27, 1974.

Hon. Peter W. Rodino, Jr.,
Chairman on the Judiciary,
House of Representatives.

Dear Mr. Chairman: I have been asked to reply to your letter of October 17 to the Secretary of State requesting views on S. 3957, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

The Department of State has no objection to S. 3957 as passed by the Senate following amendments to the bill reported out of Senate Committee.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Cordially,

LINWOOD HOLTON,
Assistant Secretary, for Congressional Relations.

UNITED STATES OF AMERICA,
GENERAL SERVICES ADMINISTRATION,
Washington, D.C., November 12, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of October 2, 1974, requested the views of the General Services Administration on H.R. 16668 and H.R. 16743, bills concerning the termination of national emergencies and certain authorities with respect thereto.

We attach a copy of a letter dated March 11, 1974, to Hon. Sam J. Ervin, Jr., Chairman of the Senate Committee on Government Operations, reviewing statutory authorities that would be affected by a termination of the current state of national emergency. Of particular concern to us are the authorities described under the heading "II. Statutes That Should be Designated as Essential to the Regular Functioning of the Government."

We continue to support fully the views expressed in our letter to Senator Ervin.

By letter dated October 17, 1974, you requested our views on S. 3957, a similar bill which, as passed by the Senate on October 7, 1974, includes a section 602 stating that the provisions of the Act shall not apply to certain listed provisions of law and the powers and authorities conferred thereby. This section preserves the authorities which are of primary concern to GSA. Accordingly, we support the Senate-passed bill in principle, and we strongly urge that your Committee take similar action respecting any bill on the subject which it may report.

We note with some concern, however, that section 202(c)(1) of S. 3957, by referring to a concurrent resolution "to continue" a national emergency, could be interpreted to require Congressional approval in order for a national emergency to continue beyond six months. We believe that section 202 should be revised to permit the continuance of a national emergency beyond six months if the Congress has not approved a resolution discontinuing it. Otherwise, if the Congress failed to take action one way or the other under the existing provisions within six months, the status of the national emergency and the statutory authorities activated by it would be placed in doubt and could result in unnecessary, lengthy, and burdensome litigation.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely,

LARRY F. ROUSH,
Acting Assistant Administrator.

Enclosure.

UNITED STATES DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR MARITIME AFFAIRS,
Washington, D.C., April 1, 1975.

Hon. PETER W. RODINO,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

Attention Mr. William P. Shattuck.

DEAR MR. CHAIRMAN: This is in reply to your oral request for information with respect to section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) which would be repealed by section 601(g) of H.R. 3884.

The purpose of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1735 et seq.) was to authorize the sale of several thousand merchant ships of various types which had been built by or for the account of the United States Government during the period January 1, 1941 and September 2, 1945, to provide logistical support to the Armed Forces during World War II. It was a surplus property disposal statute. Sales were authorized under the statute both to citizens of the United States and to aliens. The statute provided a formula by which he fixed sales prices of each type of vessel was to be ascertained. The fixed prices at which each vessel was to be sold was 50 percent of the "prewar domestic cost" was designed as the amount, as determined by the United States Maritime Commission, for which a vessel of that type could have been constructed on or about January 1, 1941. The sales authority under the Act expired on January 15, 1951.

Between January 1, 1941, and March 8, 1946 (the date of enactment of the Act), the United States Maritime Commission had sold, under other legislation, certain vessels built during the same period to citizens of the United States and had contracted to sell other vessels to such citizens the building of which was contracted for during this same period at prices considerably in excess of the prices at which the same vessels would be sold under the Act. These vessels that were sold prior to the date of enactment of the Act, nevertheless, would operate in competition with vessels sold under that statute. As a matter of fairness, and to equalize the competitive position of these vessels sold prior to the date of enactment of the Act with that of vessels sold under that statute, section 9 provided for an adjustment of the price of such vessels sold before is enactment so that the cost of such vessels to their owners would be the same as though the vessel had been purchased under the Merchant Ship Sales Act of 1946.

To qualify for the adjustment, however, the owners of such vessels were required by section 9 to apply within 60 days after the date on which the United States Maritime Commission published in the *Federal Register* the applicable "prewar domestic costs" under the Act. Such costs were published within a few months after the date of enactment of the statute. The time within which to apply for an adjustment has long since expired. All such applications have long ago been processed and there is no litigation outstanding with respect to any of them.

One of the conditions that any applicant for an adjustment had to agree to was that if the United States requisitioned the use of his vessel during the national emergency declared by President Roosevelt on May 27, 1941, the compensation to be paid for such use would not exceed 15 percent per annum of the fixed price at which the vessel would have been sold under the Merchant Ship Sales Act of 1946. This emergency was terminated by the Act of July 25, 1947 (P.L. 239, 80th Congress; 61 Stat. 449).

Section 9 of the Merchant Ship Sales Act of 1946 is now a nullity. It does not now provide authority to do anything and no future proclamation of a national emergency would provide any authority under it. Repeal of the section, therefore, is unrelated to the purpose of H.R. 3884.

Sincerely,

ROBERT J. BLACKWELL,
Assistant Secretary for Maritime Affairs.

APPENDIX

I

Provisions of law deleted or repealed by section 601(a) (renumbered by Committee amendment as section 501(a)) of the bill.

1. Paragraph 10 of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)).

Paragraph 10 provides for expatriation for persons remaining outside the jurisdiction of the United States in time of war or national emergency to evade service in the military, Air or Naval Forces of the United States. Paragraph 10 is shown below in italics, with the other relevant portions of section 349, as set out as section 1481 of Title 8, United States Code:

§ 1481. Loss of nationality by native-born or naturalized citizen; voluntary action; burden of proof; presumptions.

(a) From and after the effective date of this chapter a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

* * * * * * *

(10) departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.

(b) Any person who commits or performs any act specified in subsection (a) of this section shall be conclusively presumed to have done so voluntarily and without having been subjected to duress of any kind, if such person at the time of the act was a national of the state in which the act was performed and had been physically present in such state for a period or periods totaling ten years or more immediately prior to such act.

(c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after September 26, 1961, under, or by virtue of, the provisions of this chapter or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b) of this section, any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this chapter or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

2. Subsection 601(b) of the bill deletes paragraph 4 of section 2667 (b) of Title 10.

Paragraph 4 provides that leases of non-excess property of a military department must contain a provision making the lease revocable by the Secretary during a national emergency declared by the President. That paragraph shown in italics, together with relevant portions of section 2667 of Title 10, is as follows:

§ 2667. LEASES: NON-EXCESS PROPERTY.

(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

(1) under the control of that department;
(2) not for the time needed for public use; and
(3) not excess property, as defined by section 472 of Title 40.

(b) A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property ununder any other provision of law;

(3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) must be revocable by the Secretary during a national emergency declared by the President; and

(5) may provide, notwithstanding section 303b of Title 40 or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

(c) This section does not apply to oil, mineral, or phosphate lands.

(d) Money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an act of Congress, the lease shall be renegotiated.

3. Subparagraph (c) of Section 601 repeals a joint resolution approved August 8, 1947 (12 U.S.C. 249), concerning the regulation of consumer credit. This act ended consumer credit control under a

war time Executive order as of November 1, 1947, with an exception that the authority could be exercised during war or national emergency after the effective date of the act. The act set out as Section 249 of Title 12, United States Code, is as follows:

§ 249. REGULATION OF CONSUMER CREDIT.

After November 1, 1947, the Board of Governors of the Federal Reserve System shall not exercise consumer credit controls pursuant to Executive Order Numbered 8843, and no such consumer credit controls shall be exercised after such date except during the time of war beginning after August 8, 1947, or any national emergency declared by the President after August 8, 1947.

4. Subsection (d) of Section 601 repeals Section 5(m) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(m).

Subsection (m) bars the sale of products except ferrophosphorus outside the United States and possessions except as to the United States Government for military use or to its allies in the case of war or until six months after termination of the Korean emergency, with further restrictions. That section as set out as subsection (m) of Section 831d of Title 16, United States Code, is as follows:

§ 831d. DIRECTORS; MAINTENANCE AND OPERATION OF PLANT FOR PRODUCTION, SALE, AND DISTRIBUTION OF FERTILIZER AND POWER.

* * * * * * *

(m) No products of the Corporation except ferrophosphorus shall be sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war or, until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, or until such earlier date or dates as the Congress by concurrent resolution or the President may provide but in no event after April 1, 1953, to nations associated with the United Sates in defense activities.

5. Subsection (e) of Section 601 repeals the provisions of Section 1383 of Title 18 concerning restrictions on military areas and zones.

This is a criminal statute providing penalties for persons entering, remaining in, leaving or commiting any act in a military area or military zone. Section 1383 of Title 18, United States Code is as follows:

§ 1383. RESTRICTIONS IN MILITARY AREAS AND ZONES.

Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive order of the President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.

6. Subsection (f) of Section 601 strikes subsections (b) (c) (d) (e) and (f) of Section 6 of the Act of February 28, 1948, an amendment to the Public Health Service Act concerning the promotion of commissioned officers of the Public Health Service. (Feb. 28, 1948, ch. 83, § 6(b-f), 62 Stat. 45, 42 U.S.C. 211b).

The provisions repealed by the bill are obsolete.

The subsections, set out as section 211b of Title 42 are as follows:

§ 211b. PROMOTION OF COMMISSIONED OFFICERS.

(a) *Temporary promotions prior to July 1, 1948.*—Except as provided in the third and fourth paragraphs of this section, no promotion shall be made under section 211 of this title, prior to July 1, 1948. Until that date officers of the Regular Corps may receive temporary promotions to higher grades with the pay and allowances thereof pursuant to section 211(a)(1) of this title, in force prior to February 28, 1948, notwithstanding the termination, prior to such date, of the war and of the national emergencies proclaimed by the President. Any officer holding, on June 30, 1948, an appointment pursuant to such section to a higher temporary grade shall continue in such grade until such appointment is terminated, as the President may direct.

(b) *Service credit.*—Effective as of February 28, 1948, each officer of the Regular Corps on such date, in addition to the credit he has under preexisting legislation for purposes of promotion, shall be credited with three years of service.

(c) *Promotion based on years of service; effective date; examination; service credit.*—Officers of the Regular Corps who have, or who on or before July 1, 1948, will have, the years of service prescribed in paragraph (2) of section 211(d) of this title, for promotion to the senior assistant, full, or senior grade, shall be recommended to the President for such promotion, to be effective as of July 1, 1948, whether or not vacancies exist in such grade. Such promotions shall be made without examination, except that no promotions shall be made to the senior grade or any grade immediately below a restricted grade until the officer is found qualified for promotion pursuant to subsection (c) of section 211 of this title. No promotion shall be made pursuant to this paragraph to any grade in any professional category if such grade has been made a restricted grade pursuant to subsection (b) of section 211 of this title. For purposes of seniority, an officer promoted under this paragraph shall be credited with the years of service in the grade to which promoted equal to the excess of his years of service on the date of promotion over the years of service required for promotion to such grade under paragraph (2) of section 211(d) of this title.

Officers in the junior assistant grade in the Regular Corps who have, or who on or before July 1, 1948, will have four or more years of service in the junior assistant grade, shall be recommended to the President for promotion to the assistant grade, to be effective as of July 1, 1948, without examination and whether or not vacancies exist in such grade. For purposes of promotion and seniority in grade, an officer promoted under this paragraph shall be credited with the years of service equal to the excess of his years of service on the date of promotion over four years.

(d) *Service for purpose of seniority.*—For purposes of seniority, any officer of the Regular Corps of the Public Health Service on February 28, 1948, shall be considered as having had service in the grade which he holds on such date equal to the excess of the service credited to him for promotion purposes over the length of service required under section 211(d)(2) of this title, for promotion to such grade.

(e) *Term or tenure of office unaffected prior to July 1, 1948.*—Except as provided in the third and fourth paragraphs of this section, the provisions of this section shall not, prior to July 1, 1948, affect the term or tenure of office (including any office held under temporary promotion) of any commissioned officer of the Service in office upon February 28, 1948.

7. Subsection (g) of Section 601 repeals Section 9 of the 1946 Merchant Ship Sales Act (50 App. U.S.C. 1742). This section of the sales act concerns price adjustment to prior sales to citizens. The Committee has been advised that the section is now a nullity, and that it does not now provide authority to do anything and no future proclamation of a national emergency would provide any authority under it. The provisions of that section as set out as Section 1742 of Title 50, United States Code, are as follows:

§.1742. PRICE ADJUSTMENT ON PRIOR SALES TO CITIZENS.

(a) *Form, manner, and time of application.*—A citizen of the United States who on the date of the enactment of this Act [March 8, 1946]—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46], and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46],

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the *Federal Register* under section 3(c) of this Act [section 1736(c) of this Appendix]. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V [subchapter V of chapter 27 of Title 46] (including section 504 [section 1154 of Title 46]) or title VII of the Merchant Marine Act, 1936, as amended [subchapter VII of chapter 27 of Title 46].

(b) *Determination of amount.*—Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act [March 8, 1946], and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment [March 8, 1946]. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act [March 8, 1946] over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of 3½ per centum per annum.

(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act [March 8, 1946] to the extent not credited under paragraph (1).

(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of 3½ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act [March 8, 1946]) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act [March 8, 1946], and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act [March 8, 1946]).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so

as to limit such allowance to the amount provided for under section 8 [section 1741 of this Appendix].

(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c)(1) of this section, and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c)(1) of this section. If. after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission. such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46], shall be the net cost of the vessel to the owner.

(c) *Conditions binding on applicant.*—An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect that—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act [March 8, 1946] for Federal tax purposes shall be treated as not having been allowable: amounts credited to the Commission under subsection (b)(6) of this section shall be treated for Federal tax purposes as not having been received or accrued as income: amounts credited to the applicant under subsection (b)(5) and (6) of this section shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act (March 8, 1946);

(2) the liability of the United States for use (exclusively of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act [March 8, 1946] under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment [March 8. 1946] and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act [March 8, 1946], depreciated to the date of loss at the rate of 5 per centum per annum: *Provided*, That the provisions of this subsection (c)(2) [of this section] shall not apply to any such charter party executed on or after the date of enactment of this amendatory provision [August 6, 1956]; and the Secretary of Commerce is directed to modify any adjustment

agreement to the extent necessary to conform to the provisions of this amendatory proviso; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act [March 8, 1946], the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

(d) *Applicability of other law.*—Section 506 of the Merchant Marine Act, 1936, as amended [section 1156 of Title 46], shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act [March 8, 1946].

II

Section 602(a) of the bill H.R. 3884 (renumbered by Committee amendment as section 501(a)) provides that the provisions of the Act will not apply to the listed provisions of law and related powers, authorities and actions thereunder.

1. Clause 1 cites section 5(b) of the Act of October 6, 1917, The Trading With the Enemy Act, presently set out as 12 U.S.C. 95a and 50 U.S.C. App. 5 (b).

This section concerns the regulation of transactions in foreign exchange of gold and silver, property transfers in which any foreign country or national thereof has an interest and provides for the administration of assets or property. This section as classified to Title 12 as section 95a is as follows:

§ 95a. REGULATION OF TRANSACTIONS IN FOREIGN EXCHANGE OF GOLD AND SILVER; PROPERTY TRANSFERS; VESTED INTERESTS, ENFORCEMENT AND PENALTIES.

(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, and property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this section either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this section, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this section.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this section or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this section, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this section the term "United States" means the United States and any place subject to the jurisdiction thereof: *Provided, however*, That the foregoing shall not be construed as a limitation upon the power of the President, which is conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this section, for any or all of the terms used in this section. Whoever willfully violates any of the provisions of this section or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this section the term "person" means an individual, partnership, association, or corporation.

2. Clause 2 continues in effect the provisions of section 673 of Title 10 concerning the call up of the Ready Reserve. The Committee amendment would delete this clause from the bill.

§ 673. READY RESERVE.

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committees on Armed Services of the Senate and the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

3. Clause 3 continues in effect the provisions of the Act of April 28, 1942, set out as 40 U.S.C. 278b. This Act made an exception to the existing provisions of law concerning maximum rental of leases in cases relating to vital leases during a war or national emergency. The Act as set out in section 278b of Title 40, United States Code, is as follows:

§ 278b. SAME; EXCEPTION OF CERTAIN VITAL LEASES DURING WAR OR EMERGENCY.

The provisions of section 278a of this title shall not apply during war or a national emergency declared by Congress or by the President to such leases or renewals of existing leases of privately or publicly owned property as are certified by the Secretary of the Army or the Secretary of the Navy, or by such person or persons as he may designate, as covering premises for military, naval, or civilian purposes necessary for the prosecution of the war or vital in the national emergency.

4. Clause 4 continues in effect the provisions of the Act of June 30, 1949, set out as 41 U.S.C. 252. (Act of June 30, 1949, ch. 288, Title II, § 302, 63 Stat. 393, as amended). The Act provides authority to make purchases, and to make contracts for property and services, and in subsection (c)(1) contains an exception to a requirement of advertising such purchases or contracts where it is determined in the public interest during a period of national emergency declared by the President or by the Congress.

§ 252. PURCHASES AND CONTRACTS FOR PROPERTY.

(a) *Applicability of chapter; delegation of authority.*—Executive agencies shall make purchases and contracts for property and services in accordance with the provisions of this chapter and implementing regulations of the Administrator; but this chapter does not apply—

(1) to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration; or

(2) when this chapter is made inapplicable pursuant to section 474 of Title 40 or any other law, but when this chapter is made inapplicable by any such provision of law, sections 5 and 8 of this title shall be applicable in the absence of authority conferred by statute to procure without advertising or without regard to said section 5 of this title.

(b) *Small business concerns; share of business; advance publicity on negotiated purchases and contracts for property.*—It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for property and services for the Government shall be placed with small business concerns. Whenever it is proposed to make a contract or purchase in excess of $10,000 by negotiation and without advertising, pursuant to the authority of paragraph (7) or (8) of subsection (c) of this section, suitable advance publicity, as determined by the agency head with due regard to the type of property involved and other relevant considerations, shall be given for a period of at least fifteen days, wherever practicable, as determined by the agency head.

(c) *Negotiated purchases and contracts for property; conditions.*—All purchases and contracts for property and services shall be made by advertising, as provided in section 253 of this title, except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed $2,500;

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institutions;

(6) the property or services are to be procured and used outside the limits of the United States and its possessions;

(7) for medicines or medical property;

(8) for property purchased for authorized resale;

(9) for perishable or nonperishable subsistence supplies;

(10) for property or services for which it is impracticable to secure competition;

(11) the agency head determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test;

(12) for property or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(13) for equipment which the agency head determines to be technical equipment, and as to which he determines that the pro-

curement thereof without advertising is necessary in special situations or in particular localities in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest;

(14) for property or services as to which the agency head determines that bid prices after advertising therefor are not reasonable (either as to all or as to some part of the requirements) or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all or some of the bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder and (B) the negotiated price is the lowest negotiated price offered by any responsible supplier; or

(15) otherwise authorized by law, except that section 254 of this title shall apply to purchases and contracts made without advertising under this paragraph.

(d) *Bids in violation of antitrust laws.*—If in the opinion of the agency head bids received after advertising evidence any violation of the antitrust laws he shall refer such bids to the Attorney General for appropriate action.

(e) *Exceptions to section.*—This section shall not be construed to (A) authorize the erection, repair, or furnishing of any public building or public improvement, but such authorization shall be required in the same manner as heretofore, or (B) permit any contract for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items to be negotiated without advertising as required by section 253 of this title, unless such contract is to be performed outside the continental United States or unless negotiation of such contract is authorized by the provisions of paragraphs (1)–(3), (10)–(12), or (14) of subsection (c) of this section.

(f) *Carriage of cargo; specification of container size.*—No contract for the carriage of Government property in other than Government-owned cargo containers shall require carriage of such property in cargo containers of any stated length, height, or width.

5. Clause 5 continues in force the provisions of section 3477 of the Revised Statutes, set out in the Code as section 203 of Title 31. This section concerns the assignment of claims upon the United States and contains a provision that in time of war or national emergency, contracts may contain a provision that assignments of money due under a contract may not be subject to reduction or set-off for liability of the assignor as specified in the section.

§ 203. ASSIGNMENTS OF CLAIMS; SET-OFF AGAINST ASSIGNEE.

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, except as hereinafter provided, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. The provisions of this section shall not apply to payments for rent of post office quarters made by postmasters to duly authorized agents of the lessors.

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency: *Provided*,

1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned;
2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment;
3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing;
4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section, shall constitute a valid assignment for all purposes.

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

Any contract of the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of (1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract, (2) fines, (3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract), or (4) taxes, social security contributions, or the withholding or nonwithholding of taxes or social security contributions, whether arising from or independently of such contract.

Except as herein otherwise provided, nothing in this section shall be deemed to affect or impair rights or obligations heretofore accrued.

6. Clause 6 continues in effect the provisions of section 3737 of the Revised Statutes, also set out as section 15 of Title 41 of the United States Code. This section also has to do with the assignment of claims and set-off against the assignee, and contains language similar to that found in the section referred to in Clause 5.

§ 15 TRANSFERS OF CONTRACTS; ASSIGNMENTS OF CLAIMS; SET-OFF AGAINST ASSIGNEE

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financial institution, including any Federal lending agency: *Provided*, 1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned; 2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment; 3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing; 4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section, shall constitute a valid assignment for all purposes.

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

Any contract of the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of (1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract, (2) fines, (3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract), or (4) taxes, social security contributions, or the withholding or nonwithholding of taxes or social security contributions, whether aising from or independently of such contract.

Except as herein otherwise provided, nothing in this section, shall be deemed to affect or impair rights or obligations heretofore accrued.

The Committee amendment would add the three following references to section 602(a) which would be renumbered as section 502(a), and they would be designated as clauses 6, 7, and 8.

6. Public Law 85–804 (72 Stat. 972; 50 U.S.C. 1431–1435). The law permits departments or agencies exercising functions in connection with the national defense to deal with unusual contract situations. This includes correction of mistakes in contracts, formalization of informal commitments, indemnification of contractors for unusually hazardous risks, and other extraordinary contractual relief. In 1972, the Commission on Government Procurement recommended that this authority be made permanent. The law is as follows:

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AN ACT To authorize the making, amendment, and modification of contracts to facilitate the national defense

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this section shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein.

SEC. 2. Nothing in this Act shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;

(b) any contract in violation of existing law relating to limitation of profits;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304 (a) (15), Title 10, United States Code, or under section 302(c) (13) of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377, 394), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) the formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

SEC. 3. (a) All actions under the authority of this Act shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts.

SEC. 4. (a) Every department and agency acting under authority of this Act shall, by March 15 of each year, report to Congress all such actions taken by that department or agency during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall—

(1) name the contractor;
(2) state the actual cost or estimated potential cost involved;
(3) describe the property or services involved; and
(4) state further the circumstances justifying the action taken.

With respect to (1), (2), (3), and (4), above, and under regulations prescribed by the President, there may be omitted any information the disclosure of which would be detrimental to the national security.

(b) The Clerk of the House and the Secretary of the Senate shall cause to be published in the Congressional Record all reports submitted pursuant to this section.

Sec. 5. This Act shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate.

7. Section 2304(a)(1) of Title 10, U.S.C. Clause (1) of subsection (a) of section 2304 provides an exception to the requirement for formal advertising. (This is identical language to that in clause (1) of subsection (c) of section 302 of the Act of June 30, 1949, referred to in section 602(a)(4) of H.R. 3884.) The testimony at the hearing was that this authority is used to provide for contracts for small business, and to place contracts in labor surplus areas and disaster areas. The full section 2304 is as follows with clause (1) shown in italics:

§ 2304. PURCHASES AND CONTRACTS: FORMAL ADVERTISING; EXCEPTIONS.

(a) Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. If use of such method is not feasible and practicable, the head of an agency, subject to the requirements for determinations and findings in section 2310, may negotiate such a purchase or contract, if—

(1) it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President;

(2) the public exigency will not permit the delay incident to advertising;

(3) the aggregate amount involved is not more than $2,500;

(4) the purchase or contract is for personal or professional services;

(5) the purchase or contract is for any service by a university, college, or other educational institution;

(6) the purchase or contract is for property or services to be procured and used outside the United States and the Territories, Commonwealths, and possessions;

(7) the purchase or contract is for medicine or medical supplies;

(8) the purchase or contract is for property for authorized resale;

(9) the purchase or contract is for perishable or nonperishable subsistence supplies;

(10) the purchase or contract is for property or services for which it is impracticable to obtain competition;

(11) the purchase or contract is for property or services that he determines to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research;

(12) the purchase or contract is for property or services whose procurement he determines should not be publicly disclosed because of their character, ingredients, or components;

(13) the purchase or contract is for equipment that he determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability;

(14) the purchase or contract is for technical or special property that he determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property;

(15) the purchase or contract is for property or services for which he determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (A) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (B) the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency; and (C) the negotiated price is the lowest negotiated price offered by any responsible supplier;

(16) he determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved; or

research, and development, would otherwise be subserved; or

(17) negotiation of the purchase or contract is otherwise authorized by law.

(b) The data respecting the negotiation of each purchase or contract under clauses (1) and (7)—(17) of subsection (a) shall be kept by the contracting agency for six years after the date of final payment on the contract.

(c) This section does not authorize—

(1) the negotiation of a contract to construct or repair any building, road, sidewalk, sewer main, or similar item, unless—

(A) it is made under clauses (1)—(3), (10)—(12), or (15) of subsection (a); or

(B) it is to be performed outside the United States; or

(2 the erection, repair, or furnishing of any public building or public improvement.

(d) Whenever the head of the agency determines it to be practicable, such advance publicity as he considers suitable with regard to the property involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for property, or a service, under clause (7) or (8) of subsection (a) involving more than $10,000.

(e) A report shall be made to Congress, on May 19 and November 19 of each year, of the purchases and contracts made under clauses (11) and (16) of subsection (a) during the period since the date of the last report. The report shall—

(1) name each contractor;
(2) state the amount of each contract; and
(3) describe, with consideration of the national security, the property and services covered by each contract.

(f) For the purposes of the following laws, purchases or contracts negotiated under this section shall be treated as if they were made with formal advertising:

(1) Sections 35—45 of Title 41.
(2) Sections 276a—276a–5 of Title 40.
(3) Sections 324 and 325a of Title 40.

(g) In all negotiated procurements in excess of $2,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals, including price, shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured, and written or oral discussions shall be conducted with all responsible offerors who submit proposals with a competitive range, price, and other factors considered: *Provided*, *however*, That the requirements of this subsection with respect to written or oral discussions need not be applied to procurements in implementation of authorized set-aside programs or to procurements where it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product, that acceptance of an initial proposal without discussion would result in fair and reasonable prices and where the request for proposals notifies all offerors of the possibility that award may be made without discussion.

(h) Except in a case where the Secretary of Defense determines that military requirements necessitate specification of container sizes, no contract for the carriage of Government property in other than Government-owned cargo containers shall require carriage of such property in cargo containers of any stated length, height, or width. (Aug. 10, 1956, ch. 1041, 70A Stat. 128; Aug. 28, 1958, Pub. L. 85–800, § 7, 72 Stat. 967; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(12), 72 Stat. 1565; Sept. 10, 1962, Pub. L. 87–653, § 1(a)–(c), 76 Stat. 528; Mar. 16, 1968, Pub. L. 90–286, § 5, 82 Stat. 50; Sept. 20, 1968, Pub. L. 90–500, Title IV, § 405, 82 Stat. 851.)

8. Sections 3313, 6386(c) and 8313 of Title 10. These provisions provide authority to suspend laws for mandatory retirement or separation during war or national emergency. The committee was advised that this authority makes it possible to suspend such requirements as to some of the 913 armed forces members missing in action in Southeast Asia. The provisions presently permit them to remain in the

Armed Services until they return or are accounted for. The three sections are as follows:

§ 3313. SUSPENSION OF LAWS FOR PROMOTION OR MANDATORY RETIREMENT OR SEPARATION DURING WAR OR EMERGENCY.

In time of war, or of emergency declared by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of commissioned officers of the Regular Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 193.)

§ 8313. SUSPENSION OF LAWS FOR PROMOTION OR MANDATORY RETIREMENT OR SEPARATION DURING WAR OR EMERGENCY.

In time of war, or of emergency declared by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of commissioned officers of the Regular Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 519.)

§ 6386 SUSPENSION: PRECEDING SECTIONS

(a) The President may suspend any provision of the preceding sections of this chapter relating to officers serving in the grades of lieutenant and lieutenant (junior grade) in the Navy, other than women officers appointed under section 5590 of this title, or relating to male officers serving in the grades of captain and first lieutenant in the Marine Corps during any period when—

(1) the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of male officers on the active list in the line of the Navy; and

(2) he determines that the needs of the service so require.

(b) Officers in the following categories are not counted as officers serving on active duty for the purpose of clause (1) of subsection (a):

(1) Retired officers.

(2) Officers of the Naval Reserve assigned to active duty for training.

(3) Officers of the Naval Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve.

(4) Officers of the Naval Reserve ordered to temporary active duty to prosecute special work.

(c) During a war or national emergency, the President may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond June 30 of the fiscal year following that in which the war or national emergency ends. (Aug. 10, 1956, ch. 1041, 70A Stat. 408.)

HOUSE DEBATE AND ADOPTION OF H.R. 3884, 94TH CONGRESS

[Congressional Record—v. 121, Sept. 4, 1975—pp. H8325–H8341]

PROVIDING FOR CONSIDERATION OF H.R. 3884, NATIONAL EMERGENCIES

Mr. DELANEY. Mr. Speaker, by direction of the Committe on Rules, I call up House Resolution 524 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 524

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3884) to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from New York (Mr. Delaney) is recognized for 1 hour.

Mr. DELANEY. Mr. Speaker, I yield 30 minutes to the gentleman from Mississippi (Mr. Lott) pending which I yield myself such time as I may consume.

(Mr. Delaney asked and was given permission to revise and extend his remarks.)

Mr. DELANEY. Mr. Speaker, House Resolution 524 makes in order the consideration of H.R. 3884. It provides for an open rule with one hour of general debate. The purpose of H.R. 3884 is to terminate all powers and authorities under any national emergency existing on the date of enactment as of two years from that date. As to future emergencies, the bill provides certain procedures, requirements, powers, and authorities concerning their declaration and termination.

H.R. 3884 authorizes the President to proclaim a national emergency when, in his opinion, such a declaration is necessary, and requires the proclamation to be transmitted to the Congress and published in the *Federal Register*. A national emergency may be terminated by a concurrent resolution of the Congress.

Mr. Speaker, passage of this bill will have the positive effect of ending the practice of reconducting governmental activity under the authority of laws which derive their meaning from emergencies declared years in the past to meet problems and situations which have long since disappeared or are now drastically changed. I urge the adoption of House Resolution 524 in order that we may discuss and debate H.R. 3884.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from New York has explained the provisions of this rule, which allows for the consideration of H.R. 3884, national emergencies; but I would like to comment briefly on the rule and the bill at this time also.

This rule, House Resolution 524, provides for the House to resolve itself into the Committee of the Whole for consideration of H.R. 3884. After general debate, which shall be confined to the bill and shall not exceed one hour, the bill shall be read for amendment under the five-minute rule.

The purpose of this legislation is to terminate certain authorities with respect to national emergencies still in effect and to provide for the orderly implementation and termination of future national emergencies. To accomplish this goal the bill includes the following provisions:

First, terminates all powers and authorities under any national emergency existing on the date of enactment as of two years from that date.

Second, authorizes the President to proclaim a national emergency and requires the proclamation to be transmitted to the Congress and published in the *Federal Register*.

Third, provides for termination of such emergencies either by Congress by concurrent resolution or by Presidential proclamation.

Fourth, provides that upon the declaration of the national emergency, the President will be required to specify which emergency statutes are to be utilized.

Fifth, requires that after the declaration of a national emergency or declaration of war, the President shall submit to Congress 90 days after each six-month period a report of total expenditures which are attributable to powers and authorities exercised under such declarations. A final report is required 90 days after the termination of the emergency of war.

Sixth, repeals a number of obsolete national emergencies now in effect, some of which date back to before World War II.

Since this bill does not provide for any new programs, no costs are contemplated or predicted.

Mr. Speaker, I know of no serious objections to this measure; and I would urge, therefore, the adoption of this rule so that the House may proceed to consider the legislation.

Mr. DELANEY. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. CHARLES H. WILSON of California. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 382, nays 0, answered "present" 2, not voting 49, as follows:

[Roll No. 493]

YEAS—382

Abzug
Adams
Addabbo
Alexander
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N. Dak.
Annunzio
Archer
Armstrong
Ashbrook
Ashley
Aspin
AuCoin
Badillo
Bafalis
Baldus
Barrett
Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bell
Bennett
Bergland
Bevill
Biaggi
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonker
Bowen
Brademas
Breaux
Breckinridge
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Calif.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Burton, John
Burton, Phillip
Butler
Byron
Carney
Carr
Carter
Casey
Cederberg
Chappell
Clancy
Clausen, Don H.
Clawson, Del
Cleveland
Cochran
Cohen
Collins, Ill.
Collins, Tex.
Conable
Conlan
Conte
Corman
Cornell
Cotter
Coughlin
Crane
D'Amours
Daniel, Dan
Daniel, R. W.
Daniels, N.J.
Danielson
Davis
de la Garza
Delaney
Dellums
Dent
Derrick
Devine
Dickinson
Dingell
Dodd
Downey, N.Y.
Downing, Va.
Drinan
Duncan, Tenn.
du Pont
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Eilberg
Emery
English
Erlenborn
Esch
Eshleman
Evans, Colo.
Evans, Ind.
Fascell
Fenwick
Findley
Fish
Fisher
Fithian
Flood
Florio
Flowers
Flynt
Ford, Mich.
Ford, Tenn.
Fountain
Frenzel
Frey
Fuqua
Gaydos
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Gradison
Grassley
Green
Gude
Guyer
Hagedorn
Hall
Hammerschmidt
Hanley
Hannaford
Hansen
Harkin
Harrington
Harris
Harsha
Hastings
Hawkins
Hayes, Ind.
Hays, Ohio
Hechler, W. Va.
Heckler, Mass.
Hefner
Heinz
Helstoski
Henderson
Hicks
Hightower
Hillis
Hinshaw
Holland
Holt
Holtzman
Howe
Hubbard
Hughes
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jenrette
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, Ala.
Jones, N.C.
Jones, Okla.

Jones, Tenn.
Jordan
Karth
Kasten
Kastenmeier
Kazen
Kelly
Kemp
Ketchum
Keys
Koch
Krebs
Krueger
LaFalce
Lagomarsino
Landrum
Latta
Leggett
Lehman
Lent
Levitas
Litton
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Lott
Lujan
McCloskey
McCollister
McDade
McFall
McKinney
Macdonald
Madden
Madigan
Maguire
Mahon
Mann
Martin
Matsunaga
Mazzoli
Meeds
Melcher
Metcalfe
Meyner
Mezvinsky
Michel
Mikva
Milford
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Morgan
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nichols
Nix
Nolan
Nowak
Oberstar
Obey
O'Brien
O'Hara
O'Neill
Ottinger
Passman
Patman, Tex.
Patterson, Calif.
Pattison, N.Y.
Perkins
Pettis
Peyser
Pickle
Pike
Poage
Pressler
Preyer
Price
Quie
Quillen
Railsback
Randall
Regula
Reuss
Rhodes
Richmond
Rinaldo
Risenhoover
Roberts
Robinson
Rodino
Rogers
Roncalio
Rooney
Rose
Rosenthal
Rostenkowski
Roush
Rousselot
Roybal
Runnels
Ruppe
Russo
Ryan
St Germain
Santini
Sarasin
Sarbanes
Satterfield
Scheuer
Schneebeli
Schroeder
Schulze
Sebelius
Seiberling
Sharp
Shipley
Shriver
Shuster
Sikes
Simon
Sisk
Skubitz
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Spellman
Spence
Staggers
Stanton, J. William
Stanton, James V.
Stark
Steed
Steelman
Steiger, Ariz.
Steiger, Wis.
Stephens
Stratton
Studds
Sullivan
Symington
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Thompson
Thone
Thornton
Traxler
Treen
Tsongas
Udall
Vander Veen
Vanik
Vigorito
Waggonner
Wampler
Waxman
Weaver
Whalen
White
Whitehurst
Whitten
Wiggins
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wright
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Ga.
Young, Tex.
Zablocki
Zeferetti

NAYS—0

ANSWERED "PRESENT"—2

Mosher
Vander Jagt

NOT VOTING—49

Abdnor
Andrews, N.C.
Biester
Burke, Fla.
Chisholm
Clay
Conyers
Derwinski
Diggs
Duncan, Oreg.
Evans, Tenn.
Fary
Foley
Forsythe
Fraser
Giaimo
Haley
Hamilton
Hébert
Horton
Howard
Hungate
Jarman
Kindness
Long, Md.
McClory
McCormack
McDonald
McEwen
McHugh
McKay
Mathis
Mills
Nedzi
Patten, N.J.
Pepper
Pritchard
Rangel
Rees
Riegle
Roe
Solarz
Stokes
Stuckey
Teague
Ullman
Van Deerlin
Walsh
Young, Alaska

So the resolution was agreed to.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Fraser
Mrs. Chisholm with Mr. Riegle.
Mr. Giaimo with Mr. Long of Maryland
Mr. Howard with Mr. Foley.
Mr. Patten with Mr. Duncan of Oregon.
Mr. Pepper with Mr. Evans of Tennessee.
Mr. Rangel with Mr. McCormack.
Mr. Teague with Mr. Abdnor.
Mr. Diggs with Mr. Mills.
Mr. Hamilton with Mr. Biester.
Mr. Hungate with Mr. Jarman.
Mr. Clay with Mr. Fary.
Mr. Stuckey with Mr. Burke of Florida.
Mr. Stokes with Mr. Rees.
Mr. Mathis with Mr. Derwinski.
Mr. Conyers with Mr. Andrews of North Carolina.
Mr. Nedzi with Mr. Forsythe.
Mr. Haley with Mr. McKay.
Mr. McHugh with Mr. Horton.
Mr. Solarz with Mr. McDonald of Georgia.
Mr. Van Deerlin with Mr. Kindness.
Mr. Ullman with Mr. McClory.
Mr. Roe with Mr. McEwen.
Mr. Young of Alaska with Mr. Walsh.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

NATIONAL EMERGENCIES

Mr. FLOWERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3884). To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 3884, with Mr. Roncalio in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Alabama (Mr. Flowers) will be recognized for 30 minutes, and the gentleman from California (Mr. Moorhead) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Alabama (Mr. Flowers).

Mr. FLOWERS. Mr. Chairman, I yield such time as he may consume to the distinguished chairman of the Committee on the Judiciary, the gentleman from New Jersey (Mr. Rodino).

Mr. RODINO. Mr. Chairman, I wish to commend the gentleman from Alabama (Mr. Flowers) as well as the ranking member of the subcommittee (Mr. Moorhead), for their leadership in the handling of this legislation which is sorely needed to bring about a termination of unnecessary emergency powers.

This is a bill which provides for a statutory resolution and definition concerning the exercise of the powers and authorities in connection with national emergencies which may occur in the future. By providing for a termination of powers and authorities relating to existing emergencies, the bill will make it possible for our Government to function in accordance with regular and normal provisions of law rather than through special exceptions and procedures which were intended to be in effect for limited periods during specific emergency conditions.

Presently, the national emergency, declared in December of 1950 by President Truman in connection with the Korean conflict, is in effect. The even earlier emergency declared by President Roosevelt in March of 1933 to meet the pressing problems of the Depression has not actually been terminated. Two other emergencies are still in effect. There was a national emergency proclaimed on March 23, 1970, because of a Post Office strike, and again on August 15, 1971, a national emergency was declared to deal with balance of payments and other international problems. It can, therefore, be stated that there has been an emergency in one form or another for the last 43 years. This bill will end the practice of conducting governmental activity under authority of laws which derive force from emergencies declared years in the past to meet problems and situations which have long since disappeared or are now drastically changed. The continued and almost routine utilization of such emergency authorities for years after the original crisis serves to emphasize the fact that there is an urgent need to provide adequate laws to meet our present-day needs.

Legislation intended for use in crisis situations is by its nature not well suited in normal, day-to-day Government operations. It is also conceivable that the existence of emergency authority has actually discouraged legislative action. Statutory authorization may not have been sought by Executive agencies or granted by the Congress because of a failure to recognize the need. This bill will provide a basis for a return to a more rational and normal state of law and will eliminate reliance on unnecessary and undesirable emergency powers without upsetting routine and essential portions of our present legislative and administrative structure. In providing procedures to govern future emergencies, the bill will establish a system which will prevent such a continuing reliance on emergency statutes from recurring.

The reports received from the departments on the 93d Congress bill, and testimony before the Committee indicate support for the provisions of this bill.

The report of the Committee received from the Department of Defense recognized that world conditions and national conditions have changed since the state of national emergency was declared in 1950. It recognized the desirability of terminating existing states of emergency and further stated that it has no objection to their termination. This Department and others have noted that in some areas emergency authorities had over the years come to be relied upon in the day-to-day operations and that these continuing needs would have to be met. The Committee considered the effect of the bill on these functions and concluded that the two-year period fixed in the amended bill would provide the Congress with a reasonable opportunity to consider permanent legislation to replace the authority provided under the specific emergency provisions that provide statutory authority for such day-to-day functions. This period for orderly transition should preclude any undue dispution in Government operations.

The report received from the Department of the Treasury on November 12, 1974, was considered by the Committee with particular reference to emergency powers. That report stated the position of that department concerning the authority providing for regulation during emergencies of banking transactions, gold and silver activities, transactions in foreign exchange, and the exercise of rights in property subject to American jurisdiction in which foreign nationals have an interest.

Some of these matters are of current significance and; therefore, the bill as reported by the Committee contains the exception in section 502(a) (1) concerning section 5(b) of the act of October 6, 1917, the Trading With the Enemy Act.

Title 1 of the bill provides that after two years, all powers and authorities possessed by the President or other officer or employee of the Federal Government, based upon any declaration of national emergency in effect on the date of enactment will be terminated. The provisions of title 1 terminating powers and authorities possessed by the Executive as the result of any prior declaration of national emergency are a basic part of the bill. It is recognized that an immediate termination without a period for transition in adjustment could, to a degree, disrupt the functioning parts of our Government. After study and consideration, the Congress may or may not wish to change some of these practices and procedures based upon the emergency statutes. The bill meets this problem in two ways: First, a limited number of powers and authorities which have been identified as necessary on a continuing basis are exempted from termination by section 502 of the amended bill. Second, as I have indicated above, the termination date of all other powers and authorities is set at two years from date of enactment. This will also serve to give Government departments and agencies a period in which to identify and bring to the attention of the Congress provisions which in their estimation merit legislative consideration. The definite time limit fixed in the bill will require that the agencies take prompt action to review their legislative authority and make prompt recommendations to the Congress for any needed action. After the two-year period, the Government agencies should be freed from a dependence on emergencies authority and Government operation will proceed on the basis of procedures under permanent law and under new enactments drafted to meet current needs and operations.

Any emergency declared after the date of enactment of this legislation would not be terminated by title I. but would instead be governed by the limiting scheme created by title II. By definition, title I would affect those statutes whose conferral of powers is expressly conditioned upon a Presidential declaration of national emergency. This is provided in section 101(b), which defines "any national emergency in effect" to mean only "a general declaration of emergency made by the President." Accordingly, laws like the Defense Production Act of 1950, which do not require a Presidential declaration of emergency for their use, are not affected by this title—even though they may be referred to in a general sense as "emergency" statutes.

Title II of the bill concerns the declaration of future national emergencies. These provisions would require that in the future there shall be an improved definition and classification of the nature and effect of declaration of national emergencies. The provisions of this title of the bill, together with those of titles III and IV of the amended bill, are included to insure that the Congress will exercise continuing and effective oversight in connection with any future emergencies.

Section 201 concerns Presidential proclamations of a national emergency and authorizes such proclamations upon a finding that it is essential to the preservation, protection, and defense of the Constitution or to the common defense, safety or well-being of the territory or people of the United States. This language of section 201(a) is not intended to grant any additional authority to the President. Rather it indicates the general nature of the circumstances in which a declaration might be issued. Subsection (b) limits the effectiveness of provisions of law to be exercised during a national emergency to periods when a President's declaration of national emergency is in effect and then only in accordance with the balance of the provisions of the bill. This latter provision has particular reference to the provisions of section 301 which requires that the President specify the provisions of law he will utilize or under which other officers of the Government will act. Subsection (b) also contains a provision stating that no subsequent enactment will supersede the title unless it does so in specific terms declaring that the new law supersedes the provisions of this title.

Section 202(a) provides for the termination of national emergencies declared by the President in accordance with title II of the bill. They would be terminated by concurrent resolution of the Congress or by a proclamation by the President. The subsection contains an additional requirement that at the end of each year following the declaration of an emergency which is still in effect, the President shall publish in the *Federal Register* and transmit to the Congress a notice stating that the emergency is still in effect. This title of the bill provides, for the first time, explicit provision for the President to make the declaration of national emergency which certain statutes require. This clarifies an existing problem as to emergency statutes. At present, this power can only be implied with respect to some statutes. When the act takes effect, emergency provisions will only be implemented by the President in accordance with the terms of title II and title III of the amended bill.

In providing for the termination of emergency powers as well as their commencement, the bill makes an important change in the law. The absence of such statutory requirements and procedures in the past has resulted in the failure to terminate emergency powers and this in turn has given rise to the present situation. Under present law, which does not contain explicit termination provisions, proposals for the use of emergency power often generate discussion as to whether existing emergencies have lapsed or grown stale due to passage of time and change of circumtances. Section 202 of the present bill will eliminate all uncertainty on that point, since it sets forth the prescribed means of termination and also requires the continuing existence of a state of emergency to be formally recorded each year.

Subsections (b) and (c), of section 202 provide for procedures which will govern the consideration of the Congress of a concurrent resolution which would terminate a national emergency. These provisions are very similar to those set forth in section 7 of Public Law 93–148, the War Powers Act, of November 7, 1973.

Section 301 of the amended bill contains the provision referred to above providing that powers and authorities made available by statute for use during national emergencies are effective after a declaration of national emergency only after the President specifies the specific provisions of such laws which will be utilized. Under existing law, such a declaration would have the effect of reviving many emergency provisions throughout the United States Code, whether or not they are relevant to the emergency at hand. In many cases, the provisions are not self-executing so that their mere availability does not bring them into force without specific implementing directives. In other cases, however, changes in law automatically take effect during times of national emergency. Section 301 of the amended bill would change this by establishing that no provision of law shall be triggered by a declaration of national emergency unless and until the President specifies that provision as one of those under which he or other officers will act. The specification may be made either in the declaration of national emergency or in subsequent Executive orders. This will enable the Executive to choose specific provisions needed to deal with the emergency at hand; and it will put Congress and the public on notice as to precisely what laws are going to be invoked.

Section 401 of the amended bill details the accountability and reporting requirements applicable to the President in connection with national emergencies. All significant orders of the President shall be filed and an index maintained of that file. Further, each Executive agency is to mandate a file and an index of all rules and regulations issued during an emergency of war. These orders, rules, and regulations are to be transmitted to the Congress. Subsection (c) requires that the President transmit to the Congress within 90 days of the end of each six-month period after declaration of a national emergency or declaration of war a report of the total expenditures of the Government attributable to the exercise of powers and authorities brought into force by the declaration. A final report of all such expenditures is required within 90 days of the termination of the war or the emergency.

Section 501 provides for the repeal of provisions of seven laws which have been found to be superseded or obsolete, and section 502 for the continuation in effect of other provisions of law which have been determined to be important to governmental operation.

As has been discussed, a basic problem with emergency legislation derives from the fact that by continued and customary use the authority has become the basis for current Government activity. Simply to abolish all emergency powers and dispositions on a specified date would not actually solve this problem but would ignore that in some instances this authority is vital to some governmental functions. For years, this Committee has been concerned with the identification of emergency statutes and their utilization.

On January 25, 1962, the Committee issued a committee print identifying such laws. More recently, the effort which the Executive and Legislative branches have devoted to this bill and earlier bills in the past several years has also been directed toward identifying those powers and dispositions which should be preserved while the rest are abandoned. As is provided in section 502(b), it is intended that within a reasonably short time those provisions of law can be converted from the "emergency" portions of the code in which they now appear to standard, nonemergency sections. Until that is achieved, however, the technical conditions which enable them to remain effective must be preserved. This is achieved in section 502 of the amended bill by preserving the effect of previously issued declarations of national emergency only with respect to those eight specified provisions.

As stated in the committee report, the facts developed in the hearings on the bill demonstrate the need for legislative action. The testimony by representatives of departments in connection with this subject, and the reports received from those departments that the time has come for positive and constructive legislative action in the manner provided for in the bill. It is recommended that the amended bill be considered favorably.

Mr. Flowers. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I thank the distinguished chairman for his comments, and I might also thank him for his leadership in insisting that this matter receive early attention. It was not by way of twisting my arm, because we were agreeable to every aspect of this legislation, but in our early planning the gentleman insisted that this matter receive early attention and that is exactly what we have given it.

Mr. Chairman, the purpose of the bill is to terminate all powers and authorities under any national emergency existing on the date of enactment as of two years from that date.

As to future emergencies, the bill provides procedures and requirements concerning their declaration and termination and provides for powers and authority to be exercised in the case of future emergencies. It would also require that records be maintained of significant orders of the President and of agency rules and regulations issued during a war or national emergency, and that such orders and rules and regulations be transmitted to the Congress. A report of all expenditures directly attributable to the exercise of powers and authorities under a declaration of national emergency would have to be transmitted to the Congress within 90 days after each six-month period under the declaration.

The bill provides for the repeal of certain obsolete statutes and for the continuance in effect of emergency powers and authority under listed statutes which are important to present functions of the Government.

The bill provides for statutory resolution and definition concerning the exercise of the powers and authorities in connection with national emergencies which may occur in the future. By providing for a termination of powers and authorities relating to existing emergencies, the bill will make it possible for our Government to function in accordance with regular and normal provisions of law rather than through special exceptions and procedures which were intended to be in effect for limited periods during specific emergency conditions.

Presently, the national emergency declared in December of 1950 by President Truman in connection with the Korean conflict is in effect. The even earlier emergency declared by President Roosevelt in March of 1933 to meet the pressing problems of the depression has not actually been terminated. Two other emergencies are still in effect. There was a national emergency proclaimed on March 23, 1970, because of a Post Office strike, and again on August 15, 1971, a national emergency was declared to deal with balance of payments and other international problems. It can, therefore, be stated that there has been an emergency in one form or another for the last 43 years. This bill would end the practice of conducting governmental activity under authority of laws which derive force from emergencies declared years in the past to meet problems and situations which have long since disappeared or are now drastically changed. In providing procedures to govern future emergencies, the bill will establish a system which will prevent such a continuing reliance on emergency statutes from recurring.

Prior to the consideration of legislation in the Senate, the Senate Special Committee on the Termination of the National Emergency conducted a two-year study on the problems, application and scope of emergency statutes. The bill S. 3957, which passed the Senate late in the last Congress, was to a large degree a product of the work of that special committee. The present bill, H.R. 3884, incorporates the basic provisions of the earlier bill, S. 3957, as it was finally passed by the Senate and referred to this Committee in the 93d Congress.

It is recognized that an immediate termination without a period for transition and adjustment could undo and confuse many operations which are necessary and functioning parts of our Government. After study and consideration, the Congress may or may not wish to change some of these practices and procedures based upon the emergency statutes. The bill meets this problem in two ways: First, a limited number of powers and authorities which have been identified as necessary on a continuing basis are exempted from termination by section 502 of the amended bill. Second, as discussed above, the termination date for all other powers and authorities is set at two years from date of enactment. This will also serve to give Government departments and agencies a period in which to identify and bring to the attention of the Congress provisions which in their estimation merit legislative consideration.

Section 202(a) provides for the termination of national emergencies declared by the President in accordance with title II of the bill. They would be terminated by concurrent resolution of the Congress or by a proclamation by the President.

Subsections (b) and (c) of section 202 provide for procedures which will govern the consideration of the Congress of a concurrent resolution which would terminate a national emergency. These provisions are very similiar to those set forth in section 7 of Public Law 93–148, the War Powers Act, of November 7, 1973.

The committee has concluded that the facts developed in the hearings on the bill and as outlined in the committee report demonstrate the need for legislative action. The testimony by representatives of departments in connection with this subject, and the reports received from those departments have shown that there is general agreement that the time has come for positive and constructive legislative action in the manner provided for in this bill. It is recommended that the amended bill be considered favorably.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I thank the gentleman for yielding.

The bill before us is a product of two years work by the Senate Special Committee on National Emergencies, extensive Senate debate in the 93d Congress, and thorough hearings this year conducted by the Subcommittee on Administrative Law and Governmental Relations chaired by my distinguished colleague, the gentleman from Alabama (Mr. Flowers).

The process of study and debate has produced a bill establishing a sound approach for terminating previously declared—and currently existing—states of national emergency; providing for an orderly transition from emergency status to nonemergency status; and regulating the declaration of future states of national emergency.

If Congress is to take a serious and fundamental role in conducting the affairs of our Government, it must act to define and curtail the plenary powers possessed by the Executive branch under authority of the existing national emergencies.

Four states of declared national emergency are still in existence today in 1975.

First. President Roosevelt's declared national emergency of 1933 to deal with the Great Depression.

Second. President Truman's declared national emergency of 1950 to deal with the Korean War.

Third. President Nixon's declared national emergency of 1970 to deal with the Post Office strike.

Fourth. President Nixon's declared national emergency of 1971 to deal with the Balance of Payments Crisis.

These emergencies have given the United States a total of 41 years of emergency government, and have nurtured an Executive branch that draws many of its powers from the 470 emergency statutes uncovered by the Senate Special Committee on National Emergencies during its study.

Despite the fact that these emergency circumstances have ended, the Executive branch's day-to-day operations rely, in all too many instances on emergency powers. Important matters, such as the regulation of international trade, and routine matters such as leases of property by the General Services Administration are based on emergency authority.

To prevent disruptions in the day-to-day Executive branch functions, H.R. 3884 would not terminate the existing emergencies until two years after enactment.

Further, certain specific emergency powers would be exempted from the bill's effects with appropriate Congressional committees mandated to review these laws and report their findings to the Congress within 270 days.

Congress could retain the emergency grants of power to the President, revise them, or abolish them totally as it decided.

H.R. 3884 also would delineate a specific role for Congress in the declaration and conduct of future national emergencies.

This bill would require that the President's declaration of a national emergency must specify the emergency provisions of law under which he and his agents wish to operate.

The President and all Executive agencies must report periodically to the Congress on the use of these powers, the orders issued under the authority of the national emergency and the expenditures made in pursuance of these authorities.

At any time in this process, Congress could enact a concurrent resolution terminating the emergency. Every six months after declaration of a national emergency this bill requires that the Congress consider such a resolution of termination.

The provisions of the bill relating to the termination of future emergencies are worth a comment.

They require that Congress take specific action to enact a concurrent resolution to terminate an emergency. Thus, since a declared national emergency does not expire at the end of a certain time, Congress of necessity must publicly debate and definitely settle the issue of the existence or nonexistence of a national emergency.

Then by adopting H.R. 3884, we are consciously and deliberately forcing ourselves to come to grips periodically—and ultimately—with the vexing problems of national emergencies. The blame as well as the glory will be on the shoulders of the Congress in the years ahead. But that is as it is supposed to be—that is the responsible course to take.

The courts have long recognized the need for Congressional oversight of the emergency powers of the Presidency. In the Supreme Court's decision prohibiting President Truman's 1952 takeover of the steel mills, Justice Jackson wrote for the majority that—

> The President's power must stem from either an act of Congress or the Constitution itself . . . Emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them . . . In the practical working of our Government we . . . have evolved a technique within the framework of the Constitution by which normal Executive

powers may be considerably expanded to meet an emergency. Congress may and has granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in war or upon proclamation of a national emergency.

In the granting of those "extraordinary authorities" it is the responsibility of the Congress to see that the powers are properly used and that they do "lie dormant in normal times."

I support this bill and recommend that it be enacted as reported by the distinguished Committee on the Judiciary.

Mr. Flowers. Mr. Chairman, I certainly appreciate the comments of the gentleman from Kentucky (Mr. Mazzoli), and I wish to thank him for his effective work on the subcommittee in this matter as well as with respect to other proposals.

I also wish to thank the other members of the subcommittee, including the minority members headed by the gentleman from California (Mr. Moorhead), who have contributed greatly to this legislation.

Mr. Moorhead of California. Mr. Chairman, I yield such time as he may consume to the ranking member of the Committee on the Judiciary, the gentleman from Michigan (Mr. Hutchinson).

Mr. Hutchinson. Mr. Chairman, I rise in strong support of this needed, long overdue legislation. The "National Emergencies Act" is an appropriate and prudent response to an important policy question currently facing Congress. That is, how extensive should be the powers granted to the President in a time of national emergency and, further, how should the exercise of these special powers be overseen and controlled?

As my colleagues in the House can ascertain from the content of this debate, we are in the anomalous situation of having been in a continuous state of national emergency since 1933. In fact, there are still in force four different national emergencies, the justification for which has now passed. What this means is the President of the United States has had a legal right to exercise sweeping, extraconstitutional powers for the last 40 years. Included among these broad powers are: the right to seize property and certain commodities; the right to control all modes of transportation; the right to call up the Ready Reserves; and the right to extensively regulate various aspects of private enterprise.

This measure seeks to remedy the fact that no statutory framework now exists to guide the conduct of our Government during a period of national emergency. Importantly, H.R. 3884 would establish standards and guidelines for the future declaration and termination of national emergencies. Two years from the date of its enactment all the power and authority that the President could exercise pursuant to the four existing national emergencies, would be discontinued. Title IV of the bill sets up a reporting system, so that Congress will be regularly informed concerning the conduct of a national emergency. Through section 202 of the bill, Congress can act as a check on the possible arbitrary or unnecessary use of emergency powers, by terminating the national emergency on its own by passing a concurrent resolution.

As a firm believer in a strong Presidency and Executive flexibility, I could not support this bill if it would impair any of the rightful constitutional powers of the President. It will have no impact on his flexibility to declare a national emergency and to quickly respond if the necessity arises. The bill has no impact on the powers of the President in time of war. Rather, what it seeks to assure is that the rule of law prevails in a national emergency situation and that it cannot be bypassed, merely because we find ourselves in a state of national emergency.

H.R. 3884 is very similar to legislation (S. 3957) which unanimously passed the Senate near the end of the 93d Congress. It represents over two years of study and work, first by the Special Committee on the Termination of the National Emergency of the Senate, and, more recently, by the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee. Both groups are to be commended for their thorough and thoughtful review of the problem.

The Ford Administration is on record as supporting this legislation—both its philosophy and effect. However, the Administration has expressed reservations about one provision, that which would permit Congress to unilaterally end the existence of a national emergency by the enactment of a concurrent resolution. Otherwise, H.R. 3884 is acceptable to them. In fact, Administration officials were involved in drafting portions of the bill and their thoughts and views were continuously sought out during different stages of the legislative process. For example, the list of exempted statutes in title V were included at the request of the Administration, to insure that the bill will not disrupt any essential governmental functions.

In summary, this legislation is an effort at assuring that the exercise of emergency powers are confined to actual periods of national emergency and that Congress has a role in overseeing the conduct of national emergencies. I recommend the favorable action of the House on this matter.

Mr. **Moorhead** of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 3884—the "National Emergencies Act." This legislation proposes to do away with the irrational and potentially dangerous practice of "government-by-emergency." In its place would be substituted a regularized machinery for the future declaration and termination of national emergencies.

This measure was prompted by the findings of a two year study conducted by the Special Committee on the Termination of the National Emergency of the U.S. Senate, cochaired by Senator Charles McC. Mathias and Senator Frank Church. What they discovered was that not one, but four, national emergencies are still in effect. These are: first, the "Bank Holiday" emergency declared by President Roosevelt in the midst of the Depression on March 6, 1933; second, the Korean War emergency, declared by President Truman on December 16, 1950; third, the national emergency declared on March 23, 1970, by President Nixon to deal with the postal strike; and fourth, a national emergency to deal with international balance of payments and currency problems, also declared by President Nixon on August 15, 1971.

The continuing existence of these emergencies is not merely a historical anachronism. Rather, the state of being in a national emergency triggers into effect over 470 different statutes, some of which grant the President extraconstitutional powers. These powers were, of course, intended to assist him in dealing with a genuine emergency situation and not the everyday operation of Government.

When testifying before the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, on H.R. 3884, earlier this year, Assistant Attorney General Antonin Scalia stated:

> Since the purpose of such emergency laws is to confer upon the Government extraordinary authority which in normal times it would not have, one must assume that undue prolongation of states of emergency has the effect of creating or perpetuating powers which neither the Congress nor the President would think desirable.

So, the situation with which we have lived too long is, at best, cumbersome and inefficient. At worst, it could allow for actions wholly inconsistent with our form of Government.

It is interesting to note that, during the Second World War when the very existence of Britain was being challenged, and the possibility of invasion was imminent, Parliament took the precaution of extending that wartime emergency—along with the accompanying powers, delegated to the Government's Ministers—for only 30 days at a time. Faithfully, every 30 days, Parliament undertook to review and extend the emergency bill for still another 30 days.

The caution of the British Parliament certainly stands in stark contrast to the tendencies of the Congress in recent decades. Congress would do well to learn from our British counterparts for we have gone in the opposite direction, conferring any number of emergency powers on the Executive, in an open-ended fashion, without any supervision or control.

There has been a great deal of talk about "oversight" in this House in the recent weeks and months. The legislation we consider today is an effort at genuine Congressional oversight. H.R. 3884 would establish an orderly procedure for the handling of national emergency situations. As I have indicated no such statutory framework now exists. Under H.R. 3884, Congress would assume the major role of reviewing and overseeing the conduct of the Executive branch in a national emergency situation. Most important, under its provisions, Congress would have the power to unilaterally terminate a national emergency should the facts warrant it.

Specifically, H.R. 3884 would accomplish the following:

First. Terminate all "powers and authorities" that could be exercised pursuant to the four existing national emergencies two years from the date of enactment. The rationale for a two-year grace period is that it allows those departments and agencies, currently relying on emergency-based authorities to perform everyday functions, to seek alternative authority;

Second. Establish a procedure for the declaration of future national emergencies and provide for their termination by either the Congress or the President;

Third. Require that, after declaring a national emergency, the President specify which emergency powers statutes he intends to utilize to deal with the situation;

Fourth. Impose reporting requirements on the President and the entire Executive branch, so that Congress will be advised regarding significant actions taken and funds expended in connection with an emergency; and

Fifth. Repeal outright seven emergency-based statutes that are either obsolete or viewed as unnecessary. Also it would exempt eight statutes from the provisions of H.R. 3884, which are seen as essential to certain on-going functions of the Federal Government. It was felt that any interruption of their authority would cause serious problems. The remaining emergency powers statutes would stay on the books, but be placed in a suspended status. They would be available for use during a future national emergency, if those specific powers are deemed necessary by the President.

It is worth noting that among the exempted statutes are provisions contained in Title 10 of the United States Code dealing with mandatory separation and retirement from military service.

The exemption of these provisions prevents a premature and inadvertent separation from the military of those men classified as POW's or MIA's in Southeast Asia. Clearly, a determination regarding the status of these brave young men should not be made indirectly, in the context of legislation dealing with Presidential emergency powers. Rather, that is a decision that ought to be made on its own facts, by the President and the Department of Defense.

Another exempted law of considerable note is the so-called "Trading With the Enemy Act," which dates back to 1917. Originally designed to give the President the power to control commerce with countries with whom the United States was then at war, this authority was later expanded to include controls over certain domestic financial transactions. Since then, for example, this statute has been utilized as the authority for freezing the assets of nationals of enemy or occupied countries; for the imposition of consumer credit controls; and for establishing a foreign direct investment program. The case for its retention was effectively made by witnesses from the Treasury and Department of State, testifying before our subcommittee.

In conclusion, Mr. Chairman, I would stress that the formulation and drafting of this legislation has been a genuinely bipartisan effort. The Ford Administration and Republican Members in both the House and Senate have been extensively involved in the work product you see before you. The Ford Administration is on record as supporting the establishment of statutory controls declaring and terminating national emergencies. I urge my colleagues to vote favorably on H.R. 3884.

Mr. Chairman, I hope this legislation will be passed by this Congress without any devastating effects from amendments that are not carefully thought out in advance. The Committee has carefully gone over this legislation and has tried to work it out to perfection. So I hope that there will be only minor changes made to the legislation, if any are necessary.

Mr. Rousselot. Mr. Chairman, will the gentleman yield?

Mr. Moorhead of California. Yes, I yield to the distinguished gentleman from California.

Mr. Rousselot. Mr. Chairman, I appreciate my colleague yielding to me.

I wish to compliment the Committee and my colleagues, the gentleman from California (Mr. Moorhead), especially, who I know has been avidly proposing these changes in such wide, broad emergency powers delegated to the President and the Executive branch for some time.

I know that my colleague, the gentleman from California (Mr. Moorhead), has been, along with many other members of the Committee on the Judiciary, anxious to change this so as to reassert congressional participation in the deliberations relating to national emergencies, and I wish to compliment my colleague, the gentleman from California, for his effort in this direction, along with the chairman of the committee and the other members of the Committee on the Judiciary.

Mr. Chairman, I rise in support of H.R. 3884, legislation which would terminate the powers and authorities of the President and other Federal officials which are presently being derived from emergency declarations. This legislation provides that these declarations of national emergencies currently in effect terminate two years after the date of enactment of this bill. However, as originally introduced, H.R. 3884 provided that the termination would take place one year after the date of enactment, and I would have preferred that the one-year termination date be retained.

In my opinion, it is intolerable that Presidential emergency powers derived from a 1933 declaration by President Roosevelt concerning the problems of the depression, a 1950 declaration by President Truman in connection with the Korean conflict, a 1970 declaration because of the Post Office strike, and a 1971 declaration dealing with the balance-of-payments problem are still essentially in effect. The use of broad emergency powers by the Executive which include the right to seize property, take over transportation, institute martial laws, and indeed assume control of all aspects of private enterprise must be stopped.

This legislation provides a new mechanism to give Congress the ability to oversee the use of these powers, to take action to terminate an emergency proclamation, and to determine if an emergency situation actually exists.

As elected Representatives of the people, I believe that we have the responsibility to guard against the taking of what essentially could be basic constitutional rights, and to also protect the Nation in times of a legitimate state of emergency. This is an important role which Congress must assume, and H.R. 3884 is a step in the right direction.

Mr. Skubitz. Mr. Chairman, will the gentleman yield?

Mr. Moorhead of California. Yes, I yield to the gentleman from Kansas.

Mr. Skubitz. Mr. Chairman, I want to commend the Committee on the Judiciary for bringing this bill before us today. The statute books are cluttered with laws passed to meet a specific problem—only to remain on the books after the problem has long disappeared. Agencies of Government have learned to rely on old statutes to do their bidding—giving these statutes interpretation that were never dreamed of when the bills were enacted into law. Too often, such statutes are interpreted to give an agency authority to act when requested for new authority would be looked upon with a jaundiced eye.

The bill is the first step toward the elimination of emergency powers. I hope the Committee will consider the repeal of other type legislation that has been in the books 60, 70 years—100 years ago—never used or amended but a tool that might be called on to meet new problems. The voice of the dead should not direct the steps of the living.

I think that this is a piece of legislation long overdue.

Mr. Flowers. Mr. Chairman, I yield 5 minutes to the gentleman from Massachusetts (Mr. Drinan).

Mr. Drinan. Mr. Chairman, and members of the Committee, I commend the subcommittee on clarifying this jungle of law where for 40 years the American people have lived under the shadow of laws that never should have been enacted or at least should have been repealed.

I wish to point out, however, two deficiencies, the subject of which I will propose to cover in amendments at the appropriate time.

Mr. Chairman, it seems to me that the problem of declaring a national emergency is very analogous to what this Congress did in the War Powers Resolution Act of 1973. In that act, as is well known, Congress reviewed the Presidential powers and the Congressional powers and brought about a relatively happy marriage of those two powers.

The declaration of a national emergency, it seems to me, confers upon the President powers that are awesome and potentially dangerous, similar to the President's exercise of the war powers. Consequently, I do not think that this legislation as presently proposed should allow the President to unilaterally declare a national emergency whenever he decides that it is essential to do so. I think that we should follow the example of the War Powers Act and insist that the President consult, whenever possible, with the Congress before the enactment of the proclamation of emergency, and at every moment thereafter.

Second, I do not think that we should allow the President to proclaim an emergency and then have the burden placed upon the Congress to terminate that emergency. That is precisely what this bill does and, in my judgment, that is a defect.

Once again, that is a sharp contrast with the war powers resolution which provides for automatic termination of the use of American forces unless Congress acts affirmatively to approve an extension.

Mr. Chairman, in an amendment that I shall propose at the appropriate time, I will urge the Congress to adopt an amendment to this very necessary bill that would provide that the emergency proclaimed by the President automatically be terminated within 30 days unless the Congress affirmatively seeks to extend the emergency.

It is very significant to note in the testimony taken by the subcommittee that Senator Church said that was the original intent of the authors of this bill in the Senate. As it came out of the Special Committee, Senator Church and others felt that the Congress should not have the burden; that this emergency power should terminate automatically within 30 or 60 days unless the Congress affirmatively renews that power.

On page 30 of the hearing conducted by the subcommittee, Senator Church states:

> Why was the change made? The change was made because the Pentagon and the Administration did not want this automatic termination of their powers.

Now in the bill we have this very, very serious deficiency that permits the emergency to go on and on unless by a joint resolution of the Congress it is terminated. I think that is a basic deficiency. I think that it will aggravate the problem. It will continue the problem that is sought to be eliminated by this particular bill. After all, Mr. Chairman, an emergency is by definition a short-term affair. We should not allow the President to declare an emergency and then allow that emergency to go on and on unless someone has the initiative in both Houses of Congress to terminate it.

The President after the 30 days proposed in my amendment may once again proclaim the emergency, or Congress can extend the emergency. But in no wise should we have a very loose power residing in the President by which he can declare an emergency and this state of emergency will continue on and on until both Houses of Congress terminate it.

In conclusion, I commend the subcommittee once again but state that that we have been relatively fortunate over the past 40 years not to have had abuses of this vast power that has been given to the President by the Congress. We have been very fortunate. Yet we recognized in the War Powers Act that we must very severely limit the power of the President to declare war, and I suggest that by amendments that I shall propose we will make this present piece of legislation as tight and as important and as protective of the rights of the Congress as it should be.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MOORHEAD of California. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio (Mr. Ashbrook).

Mr. ASHBROOK. Mr. Chairman, I rise in support of H.R. 3884. This legislation would—with certain specified exceptions—terminate all powers and authorities resulting from previously declared national emergencies. It would also establish procedures for the declaration, exercise of powers, and termination of future national emergencies.

H.R. 3884 is certainly needed. Once declared, national emergencies seem to have a way of staying on the books. The Korean War emergency declared by President Truman, for example, is still in effect. So also is the 1933 declaration of President Roosevelt.

It is time to finally bring these national emergencies to an end. Outdated emergencies should not serve as the legal basis for new governmental actions. The potential for abuse is too great. The Government should operate through normal statutory procedures, not by emergency procedures which were designated for limited periods of time.

H.R. 3884 would halt this practice. No longer could a declaration of national emergency be used to justify Government activity 20 to 40 years after the crisis has passed.

Not only would it repeal past national emergencies, it would establish procedures on the declaration and termination of future emergencies. This would prevent reliance on long-passed emergencies from recurring in the years ahead.

I urge the adoption of H.R. 3884. Government action on the basis of outdated national emergencies should be brought to a halt.

Mr. ANDERSON of Illinois. Mr. Chairman, this Congress has often been chided for tacking the word "emergency" onto the title of nearly every major bill we have considered this year. A visitor to our galleries might be led to conclude that this is the emergency room of a hospital instead of the House Chamber.

Although H.R. 3884 also contains the word "emergencies," being entitled the "National Emergencies Act," I think it is significant to note that for once we are not declaring yet another emergency, but instead are attempting to terminate some past emergencies, one of which dates back some 42 years.

As if we did not have enough contemporary problems, crises and emergencies to worry about, this country is still living under four declared states of national emergency including the Roosevelt depression emergency proclamation of 1933, the Truman Korean emergency proclamation of 1950, and the Nixon postal and economic emergency proclamations of 1970 and 1971 respectively. In addition, we know from the work of the Senate Special Committee on the Termination of National Emergency in the last Congress that there are some 470 existing emergency statutes on the books. According to the Senate committee, these remain "a potential source of virtually unlimited power for a President should he choose to activate them." These potential powers conferred upon the President include the right to seize property, organize and control the means of production, seize commodities, assign military forces abroad, call reserve forces amounting to 2.5 million men to duty, institute martial law, seize and control all means of transportation, regulate all private enterprise, and restrict travel.

The chairman and ranking Republican on the Special Senate Committee, Senators Church and Mathias, issued a joint statement in September of 1973 underscoring the inherent dangers in this vast array of standby emergency authority granted to the President. In their words:

> We cannot stress enough the warning contained in this catalog of emergency power statutes. The evident pattern in this accretion of power over a 40-year period is, in our view, symptomatic of what has occurred in law-making in all areas of our government.

They went on to say, and I again quote:

> Unless Congress takes steps to strengthen its capacity to write the laws through the representative political process as the Constitution intended, then the unmistakable drift towards one-man government will continue.

Mr. Chairman, I think it is important to observe that that statement was issued prior to the release of the so-called White House Watergate transcripts and their chilling revelations about the abuse of Presidential power.

The 93d Congress, to its credit, made immense strides in the reassertion of Congressional prerogatives through the enactment of the budget reform and war powers acts as well as the responsible excercise of its impeachment powers. The torch has now passed to this new Congress to continue the momentum in checking the potential abuse of Presidential powers and reestablishing the delicate balance of powers between the great branches of our Government.

Although the Senate last year passed a bill similar to this terminating national emergencies, time ran out before the House could complete action on the measure. I want to commend our Judiciary Committee, which distinguished itself in the last Congress, for making this legislation a priority item in this session.

One of the main complaints of the Church committee was the irresponsible approach the Congress has taken to past emergency legislation. As Senators Church and Mathias put it:

> The record of Congressional performance is a poor one. These laws—in the main, drafted in the Executive branch—were passed hastily, without much consideration. Almost all of the laws made no provision for Congressional oversight nor do they provide a means for terminating the "temporary" delegated powers.

H.R. 3884, which is based on the recommendations of the Church committee, is designed to insure that the Congress will play a more active, conscientious and continuing oversight role with respect to future declarations of national emergencies. For not only does it terminate existing states of emergency after two years, but it prescribes strict procedures for the declaration and reporting of future emergencies, and for periodic Congressional review and action on those declarations.

First, the bill defines under what circumstances the President may declare a national emergency. Second, the bill requires that the proclamation be immediately transmitted to the Congress and published in the *Federal Register*. Third, the President may not exercise his authority under any emergency statutes under a state of national emergency unless he specifies which provisions he will be invoking in the proclamation or in subsequent Executive orders published in the *Federal Register* and transmitted to the Congress. Fourth, the Congress may terminate the national emergency at any time by passage of a concurrent resolution. In any event, the Congress must consider whether the emergency should be terminated at periodic intervals of every six months. Sixth, the President must indicate to the Congress annually, and through the *Federal Register*, whether the emergency is still in effect. And seventh, the President may terminate the national emergency at any time by proclamation.

Mr. Chairman, the bill contains certain other safeguards which I will not enumerate here. Suffice it to say, this legislation does institutionalize a very careful oversight procedure which shall insure that the Congress responsibly exercises its obligations with respect to any national emergency.

It is my understanding that an amendment may be offered to provide for the automatic termination of a national emergency after one year unless the President declares to the Congress at the end of that one-year period that the emergency is still in effect. Since the bill already requires the President to make such annual declarations and forces the Congress to consider a termination semiannually, I question the necessity of such an amendment. Moreover, I think it is far preferable to have the Congress take affirmative action in the event the President fails to comply with the reporting provisions, rather than simply permit the state of emergency to lapse without proper consideration and debate.

In conclusion, Mr. Chairman, I strongly support this legislation as reported by the Judiciary Committee and urge its enactment.

Mr. FOUNTAIN. Mr. Chairman, I rise in support of passage of H.R. 3884, the National Emergencies Act now before the House. The worthwhile purpose of this legislation is to terminate all powers and authorities which were given to the Executive branch during the past periods of national emergency and which are no longer needed.

During times of national crisis, like the Korean conflict or the economic difficulties encountered in the Great Depression of the 1930's, the Congress enacted more than 470 significant statutes delegating powers to the President, powers which had been the prerogative of the national legislature since the beginning of the Republic.

Generally speaking, there was good reason for the Congress, in the course of its legislative work, to delegate powers during times of national emergency. Problems have arisen, however, in the granting of various powers to the Chief Executive during previous emergencies because no mechanisms were set up to terminate the exercise of these delegated powers once the crisis had passed.

Ironically, the Executive branch still carries on some of its normal activities under authority accumulated during the designated emergencies of 1933, 1950, 1970 and 1971. Clearly the particular emergencies of these years have passed. Yet, no defined means of terminating or renouncing those grants of emergency power exist. This is a situation we must change, Mr. Chairman.

The legislation under consideration today would require the Chief Executive to specify the powers and emergency statutes he will utilize in the exercise of emergency powers, and it would require the Chief Executive to maintain a file of orders, rules, and regulations used in the exercise of the emergency authority. Furthermore, the statute would require that such information must be transmitted to the Congress, along with a report of expenditures directly related to the exercise of those emergency powers, at six-month intervals.

In conclusion, let me say, I support passage of this measure on the simple proposition that H.R. 3884 will enable the Congress to keep an active watch on the growth of Presidential power, without curtailing the President's ability to respond in times of national crisis.

Currently, the President can, if he wishes, assume great control over our personal lives, the public life of our Nation, and over our economics and political affairs, using the many emergency powers which have not been formally terminated. Such vast powers are simply not needed —especially obsolete laws designed for emergencies which have long since passed. Consequently, our task is to assist in maintaining the balance of liberties and freedoms embodied in the Constitution by repealing unneeded, outmoded emergency powers.

Passage of this measure would restore that balance without hindering any future exercise of Presidential power in times of national emergency, however unforeseen or sudden.

In a word, this measure would preserve the Executive's authority to assume great and awesome responsibilities in times of national emergency, while permitting the Congress to discharge its Constitutional responsibility to check the potential exercise of power to the disadvantage of the separation of powers and civil liberties of the American people.

Mr. Chairman, legislation of this kind is long overdue. I therefore urge passage of H.R. 3884.

Mr. Cleveland. Mr. Chairman, I rise in support of H.R. 3884 as a long-overdue reform to redress the imbalance of authority between the Executive and Legislative branches and in the interest of restoring orderly process in government. After some 40 years of subjecting the country to government by executive fiat in the name of one type of emergency or other, it is time to call a halt. The time has come for reexamination and culling out of the nearly 500 provisions of law involved in one way or another with the existence of a declared state of emergency.

The other body, in which this legislation originated, and the Committee on the Judiciary, which brings us an amended bill, are to be commended for their initiative in shaping this reform measure.

It would terminate—with certain justifiable exceptions—emergency powers and authorities—some going back to 1933—within two years of enactment and would establish a system for both the declaration and termination of emergencies in the future.

At the same time, it will restore and strengthen Congressional responsibility for regulatory-type activities which, because of their origin in emergencies of the past, tend to impinge on individual liberties and economic freedoms—which, incidentally, I happen to regard as inherently related.

While I support this legislation, I also wish to take this occasion to observe that it is somewhat negative in its thrust. The Congress in essence is withdrawing powers which it has delegated implicitly or explicitly to the Executive and allowed to remain there long after the original justification passed into history.

"ACTIVIST" PRESIDENCY

Our failure to act in the past is directly related to an infatuation with the doctrine of the "activist" Presidency which flourished not only in academic circles, but in the Congress itself for decades.

I doubt that I am alone in my conviction that this concept of the Presidency inflated the office and those who have held it in recent administrations—and I emphasize my use of the plural—and spurred the abuses of power inevitably and ultimately associated with its excessive concentration.

So I suppose that to some of my colleagues this legislation has its penitential aspects. But I also would like to think that this bill goes farther than that and like, for example, war powers legislation and other structural and procedural reforms, it represents another step in Congressional efforts to regain control over the direction and growth of government at the Federal level.

In this connection, I would hope that we would pursue the logic of this legislation and be wary of further actions which would move us in precisely the opposite direction. I refer to a continuing tendency to seek salvation from the ills that beset society by the creation of new programs and new agencies to administer them; by passing new pieces of regulatory legislation inevitably followed by massive volumes of administrative regulation.

LARGER ISSUE—BIG GOVERNMENT

We cannot have it both ways. This bill before us today is designed to curb abuses or the potential abuses of power triggered by Executive declarations of emergency. Thus the focus is the Presidency and rightly so. But I have become increasingly convinced in recent years that we create the same potential for arbitrary action and plain old bureaucratic red-tape, delays and mismanagement—bad government—when we add on to the agencies downtown additional layers of discretionary authority. My concern, again, is similar with the Executive branch.

The results are much the same, a breakdown of responsive government and increasing frustration in our efforts, as Members of the most representative House of the Legislative branch, to respond when the anonymous technicians who draft regulations and the more innovative members of the judiciary get their licks in.

This situation, as much as any of the more widely publicized infirmities of the traditional independent regulatory agencies, contributes to the growing public concern over excessive regulation by Government.

Let us by all means pass this bill. But then let us also pursue our legislative responsibilities with a greater awareness of the practical limitations on our ability to reform the world with Federal resources and Federal regulation.

Strengthened legislative oversight backed up by a stronger inclination to move by legislative enactment when the Executive or the courts act to frustrate or distort the intent of Congress—this is the practical alternative available to the Congress. If pursued in the same spirit that motivates our action on this bill, this can do much to improve the functioning of Government and its claim to the confidence of the public.

Mr. MOORHEAD of California. Mr. Chairman, I have no further request for time.

Mr. FLOWERS. Mr. Chairman, I have no further request for time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any Executive agency, as defined in section 105 of Title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated one year from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any right or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President pursuant to a statute authorizing him to declare a national emergency.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) In the event the President finds that a proclamation of a national emergency is essential to the preservation, protection and defense of the Constitution or to the common defense, safety or well-being of the territory or people of the United States, the President is authorized to proclaim the existence of a national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the *Federal Register*.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

Sec. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) The President issues a proclamation terminating the emergency.

At the end of each year following the declaration of an emergency which is still in effect, the President shall publish in the *Federal Register* and transmit to the Congress a notice stating that the emergency is still in effect. Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) of this subsection, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c)(1)(A) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 602(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

TITLE III—DECLARATIONS OF WAR BY CONGRESS

SEC. 301. Whenever Congress declares war, any provisions of law conferring powers and authorities to be exercised during time of war shall be effective from the date of such declaration.

TITLE IV—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

SEC. 401. When the President declares a national emergency no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers, will act. Such specifications may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the *Federal Register* and transmitted to the Congress.

TITLE V—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 501. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each such Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within thirty days after the end of each three month period after such declaration, a report on the total expenditures incurred by the United States Government during such three-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than thirty days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE VI—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

SEC. 601. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481 (a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of Title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit", approved August 8, 1947 (12 U.S.C. 249), is repeated.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(m)) is repealed.

(e) Section 1382 of Title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes", approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) 42 (U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal.

Sec. 602 (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95(a); 50 U.S.C. App. 5(b));

(2) Section 673 of Title 10, United States Code;

(3) Act of April 28, 1942 (4 U.S.C. 278b);

(4) An act of June 30, 1949 (41 U.S.C. 252);

(5) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(6) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15).;

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a)(1)(6) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions it may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

Mr. Flowers (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the Record, and open to amendment at any point.

The Chairman. Is there objection to the request of the gentleman from Alabama?

There was no objection.

COMMITTEE AMENDMENTS

The Chairman. The Clerk will report the first committee amendment.

Mr. Flowers. Mr. Chairman, I ask unanimous consent that all the committee amendments be considered en bloc and that reading of the committee amendments be dispensed with and that they be printed in the Record.

The Chairman. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The committee amendments are as follows:

Page 2, line 2, strike "one year" and insert "two years".

Page 2, lines 13 and 14 strike "pursuant to a statute authorizing him to declare a national emergency".

Page 3, line 21, after "clause (1)", insert "or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2)".

Page 6, strike all of lines 14, 15, 16, 17, 18, and 19.

Page 6, line 20, after "TITLE", strike "IV" and insert "III".

Page 6, line 22, after "SEC.", strike "401" and insert "301".

Page 7, line 6, after "TITLE", strike "V" and insert "IV".

Page 7, line 8, after "Sec.", strike "501" and insert "401".

Page 7, line 12, after "each", strike "such".

Page 7, line 22, after "within" strike "thirty" and insert "ninety", and after "each" strike "three-" and insert "six-".

Page 7, line 25, strike "three-month" and insert "six-month".

Page 8, line 2, strike "thirty" and insert "ninety".

Page 8, line 5, after "TITLE", strike "VI" and insert "V".

Page 8, line 8, after "Sec.", strike "601" and insert "501".

Page 8, line 24, after "Act of 1933" insert "as amended".

Page 9, line 18, after "Sec.", strike "602" and insert "502".

Page 9, line 22, strike "95(a)" and insert "95a".

Page 9, strike all of line 23.

Page 9, line 24, strike "(3)" and insert "(2)".

Page 9, line 25, strike "(4)" and insert "(3)".

Page 10, line 1, strike "(5)" and insert "(4)".

Page 10, line 3, strike "(6)" and insert "(5)".

Page 10, line 4, at the end of the sentence, strike the period and insert a semi-colon.

Page 10, after line 4: Insert:

"(6) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431–1435);

"(7) Section 2304(a)(1) of Title 10, United States Code;

"(8) Sections 3313, 6386(c) and 8313 of Title 10, United States Code."

Page 10, line 7, strike "(1)(6)".

The CHAIRMAN. The question is on the committee amendments.

The committee amendments were agreed to.

AMENDMENT OFFERED BY MR. MATSUNAGA

Mr. MATSUNAGA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Matsunaga: On page 3, line 16, strike the sentence beginning "At the end";

And on page 6, immediately after line 15, insert the following new subsection:

"(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the 90-day period prior to each anniversary date, the President does not publish in the *Federal Register* and transmit to the Congress a notice stating that the emergency is still in effect."

Mr. MATSUNAGA. Mr. Chairman, as the author of Public Law 92–128, which prohibits the internment of any U.S. resident under authority of a national emergency. I stand fully in support of legislation to provide for a national and deliberate review of declared national emergencies. This is the thrust of H.R. 3884 and I commend the Committee on the Judiciary, Chairman Rodino and especially the chairman of the subcommittee, Mr. Flowers, for bringing this legislation to the floor today. The bill will clear up the muddled situation which exists today relative to the duration of declared national emergencies.

My only concern about H.R. 3884 is with its provision that requires the President to redeclare any national emergency every year by publishing in the *Federal Register* and transmitting to Congress a notice stating that the emergency is still in effect. By failing to provide for any direct sanction in the event that the President fails to comply with this notice provision, the bill encourages Executive neglect, which may well result in frustration when Congress attempts to enforce this requirement. As reported, H.R. 3884 also fails to state the consequences of the President's failure to comply with the requirements of publication and transmittal of notice. The question as to whether or not the declared national emergency continues is left unanswered.

My amendment would provide that if no notice of a continuing national emergency is transmitted to the Congress and printed in the *Federal Register* in the manner specified in the bill, the emergency would automatically terminate on its next anniversary date. My amendment would provide another method by which declared emergencies could be terminated, in addition to the two methods provided in the committee bill, but only in a technical sense, for the President would retain the power to redeclare the emergency by a simple publication in the *Federal Register* and transmittal of notice to the Congress.

If my amendment is adopted, Members of Congress, Executive agencies, and the public desiring information on the status of any declared national emergency, may look to a single publication, the *Federal Register*, in the secure knowledge that any declared emergency over a year old has been terminated if not listed in this publication.

Mr. Chairman, my amendment would clearly serve the intended purpose of H.R. 3884, and I urge its adoption.

Mr. FLOWERS. Mr. Chairman, would the gentleman yield for a comment?

Mr. MATSUNAGA. I am happy to yield to the distinguished gentleman from Alabama, chairman of the subcommittee.

Mr. FLOWERS. Mr. Chairman, I appreciate the gentleman's comment. I certainly did not want to cut the gentleman short, particularly in the earlier part of the gentleman's statement here.

I would say from this Member's point of view it is a highly acceptable amendment. I think probably it does add something that needs to be added to the legislation that might not be taken care of quite as cleanly and as properly through the regular six-month requirement of the concurrent resolution to terminate the emergency. It would be undoubtedly a better process to have, as the gentleman suggests in his amendment.

Mr. Chairman, as far as the Members on this side are concerned, we will accept the amendment.

Mr. MATSUNAGA. Mr. Chairman, I thank the gentleman from Alabama. I believe the gentleman from Alabama has exercised keen insight into the pending matter.

Mr. MOORHEAD of California. Mr. Chairman, will the gentleman yield?

Mr. MATSUNAGA. I am happy to yield to the distinguished gentleman from California.

Mr. MOORHEAD of California. Mr. Chairman, we will also accept the amendment.

Mr. MATSUNAGA. I thank the gentleman from California. His cooperation as minority floor manager has been excellent and very much appreciated.

Mr. DANIELSON. Mr. Chairman, will the gentleman yield?

Mr. MATSUNAGA. I most gladly yield to the gentleman from California.

Mr. DANIELSON. Mr. Chairman, I want to say I will support the amendment of the gentleman from Hawaii. I think this self-destruct provision of the Matsunaga amendment will add a good deal to the bill in that emergencies will not just go on and on because were are too busy to act upon them. It is a very wholesome amendment. It will improve the other beneficial portions of the bill.

Mr. MATSUNAGA. Mr. Chairman, if the gentleman will yield, I thank the gentleman for his contribution and for his keen insight. With his support, I know now there is no "mission impossible."

Mr. DANIELSON. Mr. Chairman, I think the world should remember this as the Matsunaga "self-destruct amendment."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Hawaii (Mr. Matsunaga).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. DRINAN

Mr. Drinan. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Drinan: Page 3, strike out the period at the end of line 15 and insert in lieu thereof the following: "; or
>
> "(3) thirty calendar days elapse following the declaration of an emergency unless Congress (A) has authorized by concurrent resolution the extension of such an emergency to a date certain, or (B) is physically unable to meet as a result of an armed attack upon the United States."

Mr. Drinan. Mr. Chairman, we have to decide here today a very crucial question. Are we going to allow this vast emergency power of the President to be continued in the way that it has been done over the last 40 years? This bill is good, but it is imperfect. My amendment simply states that the President can declare an emergency, but an emergency in the nature of things is a short thing. It is something urgent.

Consequently, my amendment states that after 30 days this state of emergency lapses unless the Congress by concurrent resolution extends the emergency to a date certain. That would be simple to do at the request of the President. We are not tying his hands. At the same time, we are in control of this vast reservoir of power that is conferred upon the President.

My amendment also provides that the emergency can continue if the Congress is physically unable to meet as a result of an armed attack on the United States. This once again tracks the War Powers Resolution where we stated that the President, under the Constitution, under our laws, has only those powers that we, the Congress, specifically confer upon him.

Under my amendment when we confer the power to declare an emergency, we state that this power can be exercised for one month, and for one month only, and that at the end of that 30 days it terminates unless the Congress, both bodies, by concurrent resolution extend it. This obviously gives us a further way of protecting the country from the misuse and the abuses of the vast, inherent emergency powers of the President.

I think this amendment would improve the bill. I think furthermore that this amendment coincides with the original intent of the Senate Special Committee. Senator Frank Church stated in testimony before this subcommittee, that when they brought the bill out, they clearly intended that the emergency power would exist only during a specific period of 30 or 45 or 60 days. It was the Administration that caused the Church Special Committee to change its view and to state that the emergency goes on and on.

With the amendment adopted which was offered by the gentleman from Hawaii (Mr. Matsunaga), I think that the dilemma is pointed up even more sharply: that we cannot wait for an entire year. There is no reason why we should legislate that a whole year can go by in which these emergency powers are continued unless the Congress acts, or unless the President takes affirmative action.

The proposal I am making, Mr. Chairman, tidies up this bill. It states exactly what we, as the Congress, should do with this vast emergency power. In all candor, we have abused our powers in this area over the past 40 years. Since 1933 there have been some 470 emergency declarations, all there in the law. If we are going to continue emergency powers in the President—as we must—we must very carefully state that he has that power for 30 days and for 30 days only unless, by concurrent resolution, we seek an extension of that particular state of emergency.

Mr. Chairman, I urge the Members to vote for this amendment. It would improve this Act. It would reaffirm the Congressional powers without inhibiting the powers of the President.

Mr. FLOWERS. Mr. Chairman, I rise in opposition to the amendment of the gentleman from Massachusetts. It seems to me, Mr. Chairman, that what we have here in the bill is a perfectly balanced, coordinated approach to a problem. If we adopted the amendment as the gentleman from Massachusetts would have us do by his amendment, we would be tilting substantially in favor of, I think, enlarging the problem of Executive action while not really giving the Congress what this amendment seeks to do.

Let us remember what the bill provides in section 202(a), subsection (1), "Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency."

In addition thereto, there is a written-in proviso in the legislation that at each six-month period after the declaration of an emergency, the Congress—that is, both the House and the Senate—must vote on the issue whether or not to continue the emergency. That seems to me to be an adequate safeguard here.

The gentleman's amendment, I must say, contemplates that the Congress will not be responsible. I cannot find it in myself to declare that for this or any future Congress. Furthermore, I do not think, Mr. Chairman, there is an essential parallel between this resolution and the War Powers Act.

It is not contemplated under any of the emergency powers that are conferred upon the President through various pieces of legislation that we will be taken into a war and put American men and women overseas fighting a war, as does the War Powers Act.

We are talking about mostly technical matters. The objective of this legislation is to either wipe the slate clean or to allow a process whereby the slate can be wiped clean in the future as to these declared emergencies and the powers activated thereunder.

Therefore, Mr. Chairman, I do oppose the gentleman's amendment and I ask my colleagues to support us in voting down the amendment.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding. I appreciate what the gentleman said, and I concur in his statement. I oppose the amendment offered by the gentleman from Massachusetts.

Is it not correct, I ask the Chairman, that during our hearings and our discussions it was stated that the gentlemen from the other body, in an effort to get a piece of legislation like this on the books, urged us not to make any changes in order that the arrangements made with the Administration could go forward and this bill could be signed?

Mr. FLOWERS. The gentleman is correct. A great deal of work was done in the other body on this legislation. We worked, I think, hard and diligently on it, and in a large part we did accept what the other body did. It was not because we were rubberstamping the other body, but because it was good work. The compromise was a good piece of legislation. For that reason, I think we should leave this particular provision intact.

Mr. MAZZOLI. If the gentleman will yield further, it would seem to me, Mr. Chairman, that unless there is some real, profound need for making these changes, we should leave the legislation the way it is.

Mr. FLOWERS. I thank the gentleman.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I do not know if I understood, by the previous colloquy with the distinguished chairman of the subcommittee, whether or not we have received Senate instructions not to tamper with this legislation. If that is the effect of the discussion, I suppose it is clearly not relevant to the deliberations of 435 Members. But as I see this amendment—and I would like to raise this question with my colleagues on the subcommittee—the apparent thrust of this amendment is to determine whether an emergency under this legislation is to exist for one year or 30 days. I think that is an important enough question with which some of us might have a different view. I, of course, would be one of those who would like to limit the emergency powers of the Executive Branch to as short a time as is reasonable, and 30 days seems reasonable to me. I suppose that the Congress could, as the chairman of the subcommittee has pointed out, at any time operate within that one-year period, but I think the burden more properly in this instance should rest upon the Executive branch in requesting an emergency situation to exist.

I would say that this is a reasonable issue that has been framed by our colleague from Massachusetts. Would the gentleman not agree to that?

Mr. FLOWERS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I will yield to the gentleman.

Mr. FLOWERS. No, I would not agree to that. I think the gentleman's amendment contemplates that the Congress must act within 30 days in order to continue the emergency powers. Just as the gentleman said, he is apparently wary that the Congress would not act to terminate emergency powers. There are many impediments to the Congress acting on anything within a 30-day period. For instance we have just had a 30-day recess in the month of August. We have many reasons why I think we should not tie the Administration's hands with this sort of provision.

Mr. CONYERS. Would the gentleman not agree with me that if we were in a state of emergency and wished to terminate it and we are on a 30-day recess, we would probably be able to rise to the occasion?

Mr. FLOWERS. Mr. Chairman, I will say to the gentleman, if he will yield further, that I would hope we could rise to the occasion, but I would not want to say for sure we would. I do not think I could say, nor could he.

I think we are really talking about such a minor part of this legislation that the language here takes care of what the gentleman is apparently concerned about. We are not talking about extending this thing ad infinitum; we are talking about only a short period of time.

Mr. Conyers. Mr. Chairman, if my friend, the gentleman from Alabama (Mr. Flowers), is not certain whether the Congress in recess would be able to come back to terminate an emergency, I think that is the best stated case for this amendment and the best reason why either of us who support it would offer it.

Mr. Mazzoli. Mr. Chairman, will the gentleman yield?

Mr. Conyers. I yield to my friend, the gentleman from Kentucky.

Mr. Mazzoli. Mr. Chairman, I thank the gentleman for yielding.

I have been very interested in this conversation. I think this really goes back to our discussions concerning the War Powers Act. The House was divided on the question in this case here of whether the provisions of the War Powers Act should be brought in upon the action of Congress or upon its inaction.

Many of us felt that the inaction of Congress was an inappropriate way to show our displeasure at the pursuit of some international adventure involving American Armed Forces; others felt that was the appropriate way, because of the parliamentary problems involved, that inaction was the proper way to display our opposition.

Here in the subcommittee we came to this same philosophical split. We in the subcommittee eventually went along with the view that it should depend upon Congressional action rather than inaction, as the gentleman from Massachusetts (Mr. Drinan) would suggest.

Mr. Conyers. But, Mr. Chairman, I think this question raised by the amendment turns on whether an emergency should be constituted within 30 days or within 12 months. I think that is a reasonable basis for our position.

Mr. Mazzoli. Mr. Chairman, if the gentleman will yield further, I think not in any case does it depend on whether the Congress should take action in 30 days or in 12 months under the present bill. There is nothing that prevents us from taking action.

Mr. Conyers. I realize that, but we are trying to define the time period.

Mr. Drinan. Mr. Chairman, I make the point of order that a quorum is not present.

The Chairman. Evidently a quorum is not present.

The Chair announces that he will vacate proceedings under the call when a quorum of the committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The Chairman. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The committee will resume its business.

Mr. Moorhead of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this amendment. I think in the bill that we have before us there are adequate opportunities given to Congress to terminate a national emergency. Congress can terminate a declared national emergency at any point, in one day, or in 365 days, or at any time they desire to do so by a vote of both Houses of the Congress to terminate a national emergency.

Congress is required to review a national emergency after nine months and it would automatically end after a year if the Congress did not find that it was still necessary to retain it.

We have passed the Matsunaga amendment which puts extra pressure on the President and the Executive branch to justify an emergency.

This amendment, however, that is proposed by the gentleman from Massachusetts (Mr. Drinan) would terminate an emergency 30 days after it was declared if either or both Houses of the Congress had not been able to get together to pass a resolution supporting the emergency.

All of us know that the Senate many times is tied up in filibusters or it is tied up on other issues and we in the House also get tied up on major bills that we are considering. Sometimes we go on recess. It is unrealistic to think we can run our Government in such a way that one or both Houses of the Congress could terminate a national emergency with absolutely no action whatsoever.

I think the proposed amendment is a very dangerous amendment. I think it would do an injustice to the purpose we have before us. I would ask that the amendment be defeated.

Mr. Drinan. Mr. Chairman, will the gentleman yield?

Mr. Moorhead of California. I yield to the gentleman from Massachusetts.

Mr. Drinan. Mr. Chairman, would the gentleman from California spell out why we should have a national emergency at all, where the President unilaterally has exerted a power to do extraordinary things? Should we not state that it is an extraordinary thing when he is exercising unspecified powers? Should we not say that such powers which he assumes, then, should terminate within 30 days unless we, the lawmakers of the nation, specifically and affirmatively give the President a renewal of that power?

Mr. Moorhead of California. In this particular legislation we are telling the President that he must designate those powers that he is going to use under a declaration of a national emergency. Congress has given the President certain authority to act under emergency situations, and the President triggers specifically the laws that this Congress itself has passed on when he declares a national emergency. I know that there are other unspecified powers that a President under the Constitution can trigger, but most of the powers we are involved with here come out of Congressional acts.

Unless there is a positive action on the part of the Congress stating that there is no emergency or that they are not terminating the emergency, I do not believe the act of Congress should be—

Mr. Drinan. If the gentleman will yield again, under the six-months provision as set forth in the bill, the burden is on us to state that the President should not be exercising these powers. It seems to me that the burden should always be on the President, and my amendment seeks to place it on the President. It states that if he exercises these emergency, extraordinary, most unusual, powers, then the exercise of those powers terminates automatically after 30 days, unless we in the Congress affirmatively extend them. But under the six-months provision, if the Senate fails, and if the House passes it, then we have no way of terminating that particular emergency. It could go on for years and years.

Mr. Moorhead of California. We can terminate any emergency at any time with a vote of both Houses of Congress.

Mr. Drinan. But in the nature of things, that puts the burden on us, and the burden should not be on us. We gave, and the Congress historically has given, emergency powers for a very short period of time, for something unforeseen and unprecedented, where the President has to act in an unusual emergency situation. We have been lucky over the last 40 years that Presidents have not very often abused those powers, and now is the hour of the first curbing of this emergency power.

The Chairman. The time of the gentleman has expired.

(At the request of Mr. Flowers, and by unanimous consent, Mr. Moorhead of California was allowed to proceed for 1 additional minute.)

Mr. Flower. Mr. Chairman, will the gentleman yield?

Mr. Moorhead of California. I yield to the gentleman from Alabama.

Mr. Flowers. I thank the gentleman for yielding.

The basic problem here is that the gentleman from Massachusetts insists on a 30-day period, and the bill has by operation a six-months period in which the Congress has got to act on it. If we want to stay with the present situation, which most of us seem to agree is not a good situation, while we have in the legislation basically a compromise position which recognizes the Legislative branch's and the Executive branch's peculiar problems, if we want to give it all up in order to try to have this 30-day period, then that is what we should do. However, I do not think that is what a majority of the Members here want to do. I think we have a good measure here, a good measure that works to everybody's advantage, and so I think we ought to go with it.

The Chairman. The time of the gentleman has expired.

Mr. John L. Burton. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to direct a question, if I could, to the proposer of the amendment. I believe that there is a great deal of merit in the point of view that he has expressed concerning the entire procedure of how the emergencies would be terminated. I also believe there is a great deal of merit in the concern of the chairman and ranking minority member at least as far as the 30-day period is concerned. I am wondering what the gentleman's response would be, and also the response of the others, to, say, a 90-day period, because we are dealing with a very extraordinary power given to the Chief Executive under states of emergency.

Under laws that are presently around, there are some pretty heavy things that have come down. If we read them, we would think it was 1984. I would not say any Chief Executive would use these powers, but they are certainly there, and I am just wondering if a proposal of 90 days, which would seem to be at least to me a lot more reasonable than 30 days, and a lot more reasonable than the situation presently, might be at least an acceptable substitute for the gentleman's amendment that I know I could support.

Mr. Drinan. Mr. Chairman, will the gentleman yield?

Mr. John L. Burton. I yield to the gentleman from Massachusetts.

Mr. Drinan. I thank the gentleman for yielding.

I am not wedded to 30, 60, or 90 days, and I would be prepared to accept a substitute for 90 days. I think the basic principle I am fighting for is the burden of proof should be on the President and not on the Congress, and if the President asserts these powers and he wants to continue them after a certain term, 30, 60, or 90 days, the burden should be on him to reconvince the Congress, and the Congress—and the Congress alone—should extend those powers.

I thank the gentleman for those comments, and I would accept 60 or 90 days, because the burden of proof is the essential thing.

As the gentleman suggested, there have been some terrible enactments that have come down, some 400 or 450, over the last 30 years, and we have been very fortunate that no President has exploited them. Congress has been derelict in its duty in not tidying up this legislation.

Mr. Conyers. Mr. Chairman, will the gentleman yield?

Mr. John L. Burton. I yield to the gentleman from Michigan.

Mr. Conyers. I thank the gentleman for yielding.

I would like to commend the gentleman from California for suggesting that perhaps some compromise period may make good sense. I think that a period of 12 months or 6 months or 30 days has not been cast in granite. I concede that the Senate has acted.

But perhaps the distinguished chairman of this subcommittee would consider some possible form of a 60- or 90-day provision. I think that unless we do this we are extending a definition of emergency to cover a period of time that I think is longer than it should really be under these circumstances and as this bill is written.

Mr. Flowers. Mr. Chairman, will the gentleman yield?

Mr. John L. Burton. I yield to the chairman.

Mr. Flowers. Mr. Chairman, I think the gentleman's proposal of a longer period is far more acceptable than the 30-day period but I regret I cannot accept it on the basis of principle as well as on timing. The gentleman from Michigan knows we are not rubberstamping the Senate. I certainly hope he knows that. It is not this Member's intention to do that.

I think we have a good balance in the bill between the recognition of the problems of the Legislative branch and those of the Executive branch with its peculiar responsibilities.

As the gentleman from Massachusetts says, the reason this is here is because we failed to act over a long period. There has been no real abuse by the Executive branch of the emergency powers. Many of the emergency powers that have been utilized have been utilized for the purpose of carrying on the day-to-day business of the Government. Those powers have been utilized for so long they have become ingrained. They are almost like regular law instead of emergency powers, but we want to change this through this legislation. But to change the whole thrust of it so that we would require some affirmative legislative action in order to continue the emergency, I just could not accept that, regretfully.

I ask my colleagues to vote down the amendment.

Ms. Holtzman. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, basically I support the amendment that has been offered by the gentleman from Massachusetts (Mr. Drinan) which would automatically terminate a national emergency declared by the President in 30 days unless specifically extended by Congress. I am gravely concerned that under this bill in order to abridge vast Presidential emergency powers the Congress is going to be required to act affirmatively.

In the last session of Congress we enacted the war powers legislation. In that legislation we tried to control the warmaking power that we had seen abused. We said that if the President starts his own war, it has got to terminate automatically after a 90-day period.

That was an important provision because sometimes it takes a great deal of effort to get Congress to act affirmatively—even to stop abusive Executive action. I do not think the Congress ought to be put to the affirmative burden of stopping an abuse of Executive emergency powers. I think instead that after a 30- or 90-day period the emergency powers ought to terminate automatically unless Congress is persuaded that the circumstances warrant an extension.

I cannot believe the Congress of the United States is incapable of acting expeditiously and promptly in a real emergency when called upon by the President.

We do not even know the full extent of the emergency powers the President has. I have not seen a list of all of them. Is he allowed to have people arbitrarily arrested? Can he suspend various civil rights? If I saw a complete list of the powers the President could exercise under this bill, perhaps I would be less concerned.

In addition, there is another problem: the President's emergency powers come into play when the President declares a national emergency. Yet this bill permits the President to declare a national emergency if he finds it "essential to the preservation, protection and defense of the Constitution or to the common defense, safety, or well-being of the territory or people of the United States." These are pretty vague and broad standards for declaring a national emergency and triggering vast Presidential powers. That is why my concern exists.

When we delegate vast powers to a President, we ought to also take into account how to protect the people from an abuse of those powers. Unfortunately this bill fails to do this effectively.

Mr. FLOWERS. Mr. Chairman, if the gentlewoman will yield, the gentlewoman knows that this bill does not confer the powers. Those were conferred by other acts. And the report of the committee and the Senate study and many other books and references including earlier compilations by the House Judiciary Committee are at our disposal now to determine what emergency powers exist under the statutes passed by the Congress over a long period of time.

Ms. HOLTZMAN. Would the gentleman agree we have not as members of this committee or Congress even received a list of all the emergency powers the President has under the statute?

Mr. FLOWERS. No. I disagree with the gentlewoman. We have had this before, the subcommittee had that fully before it, a rather complete volume which identifies the statutes and sets forth the language of the different pieces of legislation conferring these powers.

The thrust of this legislation is to provide a vehicle whereby a determination is made of a national emergency which activates these powers.

Ms. HOLTZMAN. The gentleman would surely agree that in order to terminate a Presidential declaration of emergency—assuming there is no real emergency—the bill requires the Congress to act affirmatively but that in the War Powers bill in order to prevent the possible abuse of Presidential powers those war-making powers terminate automatically without affirmative Congressional action.

Mr. FLOWERS. This bill by its own terms set up the absolute requirement that the Congress meet on the measure but on a six-month basis.

Ms. HOLTZMAN. Would the gentleman answer this? Suppose the Congress in a six-month period is unable to reach an agreement about what to do; the emergency power persists, is that not true?

Mr. FLOWERS. If Congress does not deny the emergency power, then the emergency exists.

Ms. HOLTZMAN. Suppose the House of Representatives opposes the declaration of emergency and the Senate votes otherwise and an agreement cannot be reached in conference, then what happens—the emergency power persists, is that not correct?

Mr. FLOWERS. That is correct, if Congress fails to act, then Congress has failed to act.

Ms. HOLTZMAN. That is precisely the problem I have. Congress has the burden of stopping a Presidential impropriety instead of giving the President the burden of affirmatively demonstrating that an emergency really exists.

AMENDMENT OFFERED BY MR. CONYERS AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. DRINAN

Mr. CONYERS. Mr. Chairman, I offer an amendment as a substitute for the amendment offered by the gentleman from Massachusetts (Mr. Drinan).

The Clerk read as follows:

> Amendment offered by Mr. Conyers as a substitute for the amendment offered by Mr. Drinan: Page 3, strike out the period at the end of line 15 and insert in lieu thereof the following: "; or
>
> (3) 90 calendar days elapse following the declaration of an emergency unless Congress (A) has authorized by concurrent resolution the extension of such an emergency to a date certain, or (B) is physically unable to meet as a result of an armed attack upon the United States."

Mr. CONYERS. Mr. Chairman, it is my hope that our subcommittee chairman, the gentleman from Alabama (Mr. Flowers) will see in his wisdom the validity of the 90-day calendar period that would require Congress to authorize such a resolution if the emergency itself had not been terminated within that period of time.

I think this came out of our previous colloquy with the gentleman from California (Mr. John L. Burton). To me it makes eminently good sense. I think the period of time should not rest upon the Executive branch that an emergency could continue by definition and preferentially for a period of one year as proposed in the amendment of the gentleman from Hawaii.

It is conceded that the Congress can act at any time that it chooses, but by definition, I think that to extend an emergency beyond 90 days is stretching the generally understood meaning of that time.

For those reasons, I join with those of my colleagues who think that this would be a more reasonable and more practical resolution of what is generally a discussion around the definition of emergency.

I would hope that my colleagues would consider this substitute amendment and I would yield to the original maker of the amendment, the gentleman from Massachusetts (Mr. Drinan), to seek his support.

Mr. DRINAN. Mr. Chairman, I have no objection to the substitute amendment offered by the distinguished gentleman from Michigan (Mr. Conyers). I think it is a reasonable one, and I would urge my colleagues to support it.

Mr. FLOWERS. Mr. Chairman, I rise in opposition to the substitute amendment. It is eminently more sensible than the original, but it still bears the same basic fault that the original did. It destroys the finely tuned balance that is in the original piece of legislation.

Mr. MOORHEAD of California. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from California.

Mr. MOORHEAD of California. Mr. Chairman, I wish to join with the chairman of the subcommittee in his remarks. I think that while it is somewhat better than the original, the same major objections are present in the substitute amendment.

Mr. FLOWERS. Mr. Chairman, I ask for a no vote on the substitute and on the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. Conyers) as a substitute for the amendment offered by the gentleman from Massachusetts (Mr. Drinan).

The question is taken; and on a division (demanded by Mr. Drinan) there were—ayes 17; noes 36.

So the substitute amendment for the amendment was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts (Mr. Drinan).

The amendment was rejected.

AMENDMENT OFFERED BY MR. DRINAN

Mr. DRINAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Drinan: Page 2, line 22, insert immediately after the period the following:

"The President shall issue such a proclamation pursuant only to: (1) a declaration of war; (2) an attack upon the United States; its territories or possessions, or its armed forces; or (3) the prior enactment of a joint resolution specifically authorizing the President to issue such proclamation. The President in every possible instance shall seek the advice and counsel of Congress and provide Congress with all pertinent information before proclaiming the existence of a national emergency. After such proclamation has been issued, the President shall consult regularly with Congress until the national emergency has been terminated."

Mr. DRINAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. DRINAN. Mr. Chairman, in H.R. 3884 there is no standard really, whatsoever, when and why the President can proclaim a national emergency. Section 201 states simply that the President may do this when he finds that such a proclamation of a national emergency is essential to the "preservation, protection and defense of the Constitution or to the common defense, safety, or well-being of the territory or people of the United States."

It seems to me, Mr. Chairman, very clear that the Congress was given the lawmaking powers under the Constitution, and that whatever right the President has to declare an emergency should be spelled out by the Congress of the United States. Though the last 40 years, the Congress has been very careless and derelict in not doing this. I think that today in this bill we should specify three areas, and three areas alone, in which the President can proclaim an emergency. Obviously, when there is a declaration of war; second, when there is an attack upon the United States or its territories or its armed forces; and third, when the Congress by prior enactment of a joint resolution specifically authorizes the President to issue such proclamation.

In each case, once again tracking the War Powers Resolution Act, the President in every possible instance, according to my amendment, shall seek the advice and counsel of Congress and shall provide Congress with all pertinent information before proclaiming the existence of a national emergency.

After the emergency has been proclaimed, the President shall consult regularly with the Congress until the national emergency has been terminated.

The key word in the language of my amendment is "consult." Why should we in the Congress allow the President unilaterally to proclaim an emergency and unilaterally to implement the provisions of said emergency? That is an abdication of the power clearly placed in the Congress by the Constitution. I would urge, therefore, Mr. Chairman, that we adopt as an amendment to this particular bill today this clearly defined, explicitly spelled-out set of reasons why the President in certain limited unusual circumstances may in fact declare an emergency.

Mr. FLOWERS. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Massachusetts.

Mr. Chairman, I must say in this particular instance I am even in much stronger opposition than I was in the previous instance. The gentleman's amendment would attempt, it appears, to derogate the power of the President under the Constitution of the United States. It would attempt to define within a very, very narrow scope the power of the President to declare a national emergency. The gentleman's amendment would require that it be done only pursuant to a declaration of war or an attack upon the United States, which we would have to assume would be a prelude to a declaration of war, or a prior enactment of a joint resolution. In other words, the Legislative branch would be required to pass a joint resolution directing the President to so declare a national emergency.

Mr. Chairman. I do not think that is what the principle of separation of powers of the branches of Government under our Constitution envisions. It envisions that the Executive has some very peculiar responsibilities as does the Legislative branch. We do not govern by legislative fiat in this country. We are not a parliamentary form of government.

Mr. Chairman, I strongly oppose the gentleman's amendment. I think there would be serious questions as to whether this bill would be enacted into law should this amendment be adopted. It would completely destroy the balance, as I said previously, that exists in this bill.

Mr. Chairman, for these and a multitude of other reasons I strongly oppose the gentleman's amendment.

Mr. Moorhead of California. Mr. Chairman, I move to strike the last word, and I rise in opposition to this amendment.

Mr. Chairman, this amendment would completely take away from the President the flexibility of acting in times of crisis or an emergency. I think there was one particular emergency that was declared by a very well known President at an important time, and that was President Roosevelt's declaration of the banking holiday. If that had been triggered by Congressional debate and it required 30 days or so of debate before it could be put into effect, all the good that could have been done would have been wiped out and the whole thing would have gone down the tube before we had ever begun.

Mr. Chairman, it is important that we give our President some flexibility from time to time. This bill gives the Congress the right to wipe out those emergencies on a moment's notice if we decide it is in the best interest to do so. But let us at least leave the President the constitutional authority he has to protect this country in times of need.

Mr. Chairman, I ask for a no vote.

Mr. Conyers. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, my final participation in this debate revolves around the reason of this question: What happens if the President of the United States vetoes the congressional termination of the emergency power? Is that contemplatable within the purview of this legislation?

I direct the question to the Chairman.

Mr. Flowers. Mr. Chairman, will the gentleman yield?

Mr. Conyers. I yield to the gentleman from Alabama.

Mr. Flowers. Mr. Chairman, on the advice of counsel we have researched that thoroughly. A concurrent resolution would not require Presidential signature of acceptance.

It would be an impossibility that it would be vetoed.

Mr. Conyers. So there would be no way that the President could interfere with the Congress?

Mr. Flowers. The gentleman is correct.

Mr. Conyers. Mr. Chairman, I thank the gentleman.

The Chairman. The question is on the amendment offered by the gentleman from Massachusetts (Mr. Drinan).

The amendment was rejected.

The Chairman. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. McFall) having assumed the chair, Mr. Roncalio, Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee having had under consideration the bill (H.R.

3884) to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies, pursuant to House Resolution 524, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The Speaker pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The Speaker. pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The Speaker pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. Flowers. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device and there were—yeas 388, nays 5, not voting 40, as follows:

[Roll No. 494]

YEAS—388

Abdnor
Abzug
Adams
Addabbo
Alexander
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Armstrong
Ashbrook
Ashley
Aspin
AuCoin
Badillo
Bafalis
Baldus
Barrett
Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bell
Bennett
Bergland
Bevill
Biaggi
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonker
Bowen
Brademas
Breaux
Breckinridge
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Calif.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Burton, John
Burton, Phillip
Butler
Byron
Carney
Carr
Carter
Casey
Cederberg
Chappell
Chisholm
Clancy
Clawson, Del
Clay
Cleveland
Cochran
Cohen
Collins, Ill.
Collins, Tex.
Conable
Conlan
Conte
Corman
Cornell
Cotter
Coughlin
Crane
D'Amours
Daniel, Dan
Daniel, R. W.
Daniels, N.J.
Danielson
Davis
de la Garza
Delaney
Dent
Derrick
Devine
Dingell
Dodd
Downey, N.Y.
Downing, Va.
Duncan, Tenn.
du Pont
Early
Eckhardt

Edgar
Edwards, Ala.
Edwards, Calif.
Eilberg
Emery
English
Erlenborn
Esch
Eshleman
Evans, Colo.
Evans, Ind.
Fascell
Fenwick
Findley
Fish
Fisher
Flood
Florio
Flowers
Flynt
Foley
Ford, Mich.
Ford, Tenn.
Fountain
Frenzel
Frey
Fuqua
Gaydos
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Gradison
Grassley
Green
Gude
Guyer
Hagedorn
Haley
Hall
Hammerschmidt
Hanley
Hannaford
Hansen
Harkin
Harrington
Harris
Harsha
Hastings
Hawkins
Hayes, Ind.
Hays, Ohio
Hechler, W. Va.
Heckler, Mass.
Hefner
Heinz
Helstoski
Henderson
Hicks
Hightower
Hillis
Hinshaw
Holland
Holt
Horton
Howe
Hubbard
Hughes
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jenrette
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Karth
Kasten
Kastenmeier
Kazen
Kelly
Kemp
Ketchum
Keys
Kindness
Koch
Krebs
Krueger
LaFalce
Lagomarsino
Latta
Leggett
Lehman
Lent
Levitas
Litton
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Lott
Lujan
McCloskey
McCollister
McDade
McDonald
McFall
McHugh
McKinney
Macdonald
Madden
Madigan
Maguire
Mahon
Mann
Martin
Matsunaga
Mazzoli
Meeds
Melcher
Metcalfe
Meyner
Mezvinsky
Michel
Mikva
Milford
Miller, Calif.
Miller, Ohio
Mills
Mineta
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Mottl
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nichols
Nix
Nolan
Nowak
Oberstar
Obey
O'Brien
O'Hara
O'Neill
Ottinger
Passman
Patman, Tex.
Patterson, Calif.
Pattison, N.Y.
Perkins
Pettis
Pickle
Pike
Poage
Pressler
Preyer
Price
Quie
Quillen
Railsback
Randall
Rangel
Rees
Regula
Reuss
Rhodes
Richmond
Rinaldo
Roberts
Robinson
Rodino
Rogers
Roncalio
Rooney
Rose

Rosenthal
Rostenkowski
Roush
Rousselot
Roybal
Runnels
Ruppe
Russo
Ryan
St Germain
Santini
Sarasin
Sarbanes
Satterfield
Scheuer
Schneebeli
Schroeder
Schulze
Sebelius
Seiberling
Sharp
Shipley
Shriver
Shuster
Sikes
Simon
Sisk
Skubitz
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Spellman
Spence
Staggers
Stanton, J. William
Stanton, James V.
Stark
Steed
Steelman
Steiger, Ariz.
Steiger, Wis.
Stephens
Stokes
Stratton
Studds
Sullivan
Symington
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Teague
Thone
Thornton
Traxler
Treen
Tsongas
Udall
Ullman
Vander Jagt
Vander Veen
Vanik
Vigorito
Waggonner
Wampler
Waxman
Weaver
Whalen
White
Whitehurst
Whitten
Wiggins
Wilson, Bob
Wilson, C. H.
Winn
Wirth
Wolff
Wright
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Ga.
Young, Tex.
Zablocki
Zeferetti

NAYS—5

Conyers
Dellums
Drinan
Holtzman
Moss

NOT VOTING—40

Biester
Burke, Fla.
Clausen, Don H.
Derwinski
Dickinson
Diggs
Duncan, Oreg.
Evins, Tenn.
Fary
Fithian
Forsythe
Fraser
Hamilton
Hébert
Howard
Hungate
Jarman
Jordan
Landrum
Long, Md.
McClory
McCormack
McEwen
McKay
Mathis
Nedzi
Patten, N.J.
Pepper
Peyser
Pritchard
Riegle
Risenhoover
Roe
Solarz
Stuckey
Thompson
Van Deerlin
Walsh
Wilson, Tex.
Young, Alaska

So the bill was passed.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Duncan of Oregon.
Mr. Stuckey with Mr. Riegle.
Mr. Hamilton with Mr. Charles Wilson of Texas.
Mr. Thompson with Mr. Fithian.
Mr. Fary with Mr. Biester.
Mr. McCormack with Ms. Jordan.
Mr. Nedzi with Mr. Long of Maryland.
Mr. Pepper with Mr. Don H. Clausen.
Mr. Patten with Mr. Forsythe.
Mr. Roe with Mr. McClory.
Mr. Solarz with Mr. McKay.

Mr. Fraser with Mr. Dickinson.
Mr. Van Deerlin with Mr. Burke of Florida.
Mr. Diggs with Mr. Howard.
Mr. Evins of Tennessee with Mr. Jarman.
Mr. Risenhoover with Mr. McEwen.
Mr. Landrum with Mr. Derwinski.
Mr. Mathis with Mr. Peyser.
Mr. Hungate with Mr. Pritchard.
Mr. Walsh with Mr. Young of Alaska.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FLOWERS. Mr. Speaker, I ask unanimous consent that all Members may have five legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Alabama.

There was no objection.

INTRODUCTION OF S. 977, 94TH CONGRESS

[Congressional Record—v. 121, Mar. 6, 1975—p. S3202]

By Mr. MATHIAS (for himself and Mr. CHURCH)

S. 977. A bill to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies. Referred to the Committee on Government Operations.

NATIONAL EMERGENCIES ACT

Mr. MATHIAS. Mr. President two years ago the Senate created the Special Committee on the Termination of the National Emergency to examine the state of emergency which then existed and to provide a regular and constitutional process to meet future needs. Senator Church and I were named cochairmen of the only bipartisan committee in the Senate, and Senators Hart, Pell, Stevenson, Case, Pearson, and Hansen were named Committee members.

The Committee concluded that not one, but four national emergencies exist and continue to this day. Moreover, we discovered that emergency powers exist in more than 470 separate statutes and, when combined, give the President potential dictatorial powers. It seemed appropriate to change the name of the Committee to its present title, the Special Committee on National Emergencies and Delegated Emergency Powers and to consider remedial legislation.

Last year the Special Committee submitted to the Senate Government Operations Committee S. 3957. This bill defined a national emergency, removed obsolete statutes from the books, continued six statutes in their present status, and placed the remainder of the emergency powers under special procedures which insure that adequate notice exists of Presidential action invoking emergency powers and that there is created in Congress the right to terminate such emergencies by concurrent resolution. Moreover, procedures would be established by the law which would encourage the Congress to consider and vote every 6 months on whether a state of national emergency should or should not be continued.

S. 3957 was favorably recommended to the Senate by the Government Operations Committee and passed the Senate unanimously on October 7. It had been the intention of the chairman of the House Judiciary Committee to hold early hearings in the House so that the National Emergencies Act might become law in the last session of Congress. The impeachment hearings and the nomination of Vice President Rockefeller prevented the Committee from realizing this hope.

Senator Church and I have now met with the chairman, Representative Rodino, and the subcommittee chairman, Representative Walter Flowers, to determine how the Act might be given early and favorable consideration. The House committee leaders have been most helpful and have scheduled the first hearing today.

I now have the pleasure of introducing the National Emergencies Act for consideration in this Congress. The version I lay before the Senate is nearly identical to S. 3957 and is identical to the version introduced in the House last week. Two minor technical amendments have been made.

It is my hope that we will soon see the enactment into law of this legislation. I ask that this bill be appropriately referred.

TEXT OF S. 977, 94TH CONGRESS

A BILL To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any Executive agency, as defined in section 105 of Title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated one year from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President pursuant to a statute authorizing him to declare a national emergency.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) In the event the President finds that a proclamation of a national emergency is essential to the preservation, protection and defense of the Constitution or to the common defense, safety, or well-being of the territory or people of the United States, the President is authorized to proclaim the existence of a national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the *Federal Register.*

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

SEC. 202 (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency.

At the end of each year following the declaration of an emergency which is still in effect, the President shall publish in the *Federal Register* and transmit to the Congress a notice stating that the emergency is still in effect. Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) of this subsection, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c)(1) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraph (1)–(4) of this subsection, subsection (b) of this section, and section 602(b) of this Act are enacted by Congress—

> (A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and
>
> (B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

TITLE III—DECLARATIONS OF WAR BY CONGRESS

Sec. 301. Whenever Congress declares war, any provisions of law conferring powers and authorities to be exercised during time of war shall be effective from the date of such declaration.

TITLE IV—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

Sec. 401. When the President declares a national emergency no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the *Federal Register* and transmitted to the Congress.

TITLE V—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

Sec. 501. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each such Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within thirty days after the end of each three-month period after such declaration, a report on the total expenditures incurred by the United States Government during such three-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than thirty days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE VI—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

SEC. 601. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of Title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit," approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831(m)) is repealed.

(e) Section 1383 of Title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes," approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal.

SEC. 602. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95(a); 50 U.S.C. App. 5(b));

(2) Section 673 of Title 10, United States Code;

(3) Act of April 28, 1942 (40 U.S.C. 278b);

(4) Act of June 30, 1949 (41 U.S.C. 252);

(5) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(6) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15).

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) (1)–(6) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions it may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

Calendar No. 1102

94TH CONGRESS } SENATE { REPORT
2d Session } { No. 94-1168

NATIONAL EMERGENCIES ACT

AUGUST 26, 1976.—Ordered to be printed

Mr. RIBICOFF, from the Committee on Government Operations, submitted the following

REPORT

[To accompany H.R. 3884]

The Committee on Government Operations, to which was referred the bill (H.R. 3884) to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

On page 2, strike out lines 16 through 23, and insert in lieu thereof the following:

> SEC. 201(a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

On page 3, line 18, after "subsection," insert "whichever date is earlier,".

On page 4, line 14, strike the word "days," and insert "days after the day on which such resolution is referred to such committee,".

On page 4, line 20, strike the word "thereafter," and insert in lieu thereof "after the day on which such resolution is reported,".

On page 4, line 25, after the word "days" insert "after the day on which such resolution is referred to such committee".

On page 5, line 2, strike the word "days," and insert "days after the day on which such resolution is reported,".

On page 5, lines 9 and 10, strike out "after the legislation is referred to the committee of conference." and insert in lieu thereof "after the day on which managers on the part of the Senate and the House have been appointed.".

On page 5, lines 11 and 12, strike out "in the Record".

On page 5, line 15, strike the word "filed." and insert "filed in the House in which such report is filed first.".

On page 5, line 19, strike out "602(b)" and insert in lieu thereof "502(b)".

On page 6, line 15, strike out "the emergency is still in effect." and insert in lieu thereof "such emergency is to continue in effect after such anniversary.".

On page 6, lines 18 and 19, strike the word "emergency", and insert the word "emergency,".

On page 10, line 12, strike out "it" and insert in lieu thereof "such committee".

PURPOSE

The purpose of H.R. 3884 is to terminate, as of 2 years from the date of enactment, powers and authorities possessed by the Executive as a result of existing states of national emergency, and to establish authority for the declaration of future emergencies in a manner which will clearly define the powers of the President and provide for regular congressional review.

In order to carry out this purpose, the National Emergencies Act would:

(1) Terminate, as of 2 years from the date of enactment, powers and authorities available to the Executive, pursuant to approximately 470 statutes, as a result of the states of national emergency now in force;

(2) Provide for congressional review of future Presidential declarations of national emergencies no less frequently than every 6 months and congressional termination of states of emergency at any time by concurrent resolution;

(3) Provide for congressional oversight of and accountability for actions taken by the Executive in the exercise of delegated emergency powers;

(4) Repeal specific obsolete emergency powers statutes and retain in force certain statutes deemed necessary for ongoing operations of the government.

Enactment of this legislation would end the states of emergency under which the United States has been operating for more than 40 years. It would also insure that the extraordinary powers which now reside in the hands of the Chief Executive—powers delegated by the Congress to seize property and commodities, organize and control the means of production, assign military forces abroad and restrict travel—could be utilized only when emergencies actually exist, and then, only under safeguards of congressional review. Reliance on emergency authority, intended for use in crisis situations would no longer be available in non-crisis situations. At a time when governments throughout the world are turning with increasing desperation to an all-powerful executive, this legislation is designed to insure that the United States travels a road marked by carefully constructed legal safeguards.

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COMMITTEE AMENDMENTS

The committee adopted one substantive and several technical amendments to H.R. 3884, as passed by the House of Representatives.

With respect to the substantive amendment, following consultations with several constitutional law experts, the committee concluded that section 201(a) is overly broad, and might be construed to delegate additional authority to the President with respect to declarations of national emergency. In the judgment of the committee, the language of this provision was unclear and ambiguous and might have been construed to confer upon the President statutory authority to declare national emergencies, other than that which he now has through various statutory delegations.

The Committee amendment clarifies and narrows this language. The Committee decided that the definition of when a President is authorized to declare a national emergency should be left to the various statutes which give him extraordinary powers. The National Emergencies Act is not intended to enlarge or add to Executive power. Rather the statute is an effort by the Congress to establish clear procedures and safeguards for the exercise by the President of emergency powers conferred upon him by other statutes.

Therefore, the Committee amendment makes no attempt to define when a declaration of national emergency is proper. The amendment simply requires the President to transmit to the Congress and publish in the Federal Register a Presidential declaration of national emergency authorized by other Acts of Congress.

The principal technical amendments adopted by the committee are contained in those portions of section 202 which set forth the procedures and time sequences to be followed by both Houses in considering and taking action with respect to declarations of national emergency. A perfecting amendment in section 202(c)(5) would correct a printing error by changing a reference to section 602(b) to section 502(b). Additional technical and perfecting amendments are contained in sections 301 and 502(b). None of the technical and perfecting amendments make any substantive changes.

STATEMENT

Title I of H.R. 3884 provides for the termination of all existing powers and authorities based on any general declaration of national emergency in effect on the date of enactment, to take effect 2 years from the date of enactment of the legislation. The 2-year delay is designed to provide time for all executive agencies, offices, and departments, dependent on emergency statutes for their day-to-day operations, to seek permanent legislation, if appropriate. It would permit an orderly transition and give the Congress adequate opportunity to evaluate executive requests.

Exempted from the general termination provision are (1) any action taken, or proceeding pending, not finally concluded or determined on such date; (2) any action or proceeding based on any act committed prior to such date; and (3) any rights or duties that have matured or penalties that were incurred prior to such date. These exemptions are to be narrowly construed to cover only pending legal actions or administrative proceedings based upon an action taken while the declaration of a national emergency was in effect, and the right to bring legal actions or administrative proceedings as a result of actions taken while the declaration of national emergency was in effect.

Thus, the termination of a declaration of national emergency would not prohibit legal action against a person or persons for conduct in violation of an emergency statute if the conduct occurred while the declaration of national emergency was in effect. The termination of an emergency power which is a subject of a court action still terminates that power but it does not affect the validity of that pending court action. Thus the emergency powers are terminated but not court proceedings based upon actions taken while those powers were still in effect.

Title I pertains solely to powers and authorities based on a Presidential declaration of emergency issued prior to the date of enactment of the bill. It does not affect laws, such as the Defense Production Act, which are not dependent upon a Presidential declaration of emergency—even though such laws may be referred to in a general sense as "emergency" statutes.

Title II concerns the declaration and termination of future national emergencies. The provisions of title II, together with those of titles III and IV, are designed to insure congressional oversight of Presidential actions pursuant to declarations of a national emergency autorized by an act of Congress. While the War Powers Act, (Public Law 93–148), established oversight powers and procedures with respect to the commitment of our armed forces absent a congressional declaration of war, no such oversight has existed to date with respect to other presidential actions taken pursuant to declarations of national emergency. Therefore, the Special Committee on National Emergencies recommended the remedial action contained in this statute. While these procedures are patterned after those in the War Powers Act, this statute is not intended to conflict with, supersede, or alter any part of the War Powers Act.

Section 201(a) provides that, with respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation must be immediately transmitted to the Congress and published in the Federal Register. This section is clearly not intended to grant additional authority to the President. The President can only exercise those powers delegated to him in other statutes. The circumstances authorizing a declaration of national emergency are defined by the statutes giving the President the extraordinary powers to use in the case of a national emergency. The purpose of this statute is to prescribe the procedures to be followed in the event that the President proclaims a national emergency, as authorized by some other statute.

The provisions of this bill are not meant to supersede existing provisions of law which authorize declarations of emergency by the Congress. The legislation is directed solely to Presidential declarations of emergency.

Emergency authorities will come into effect only if the President complies with the provisions of this act. Section 201(a) requires that any Presidential declaration of an emergency be immediately transmitted to the Congress and published in the Federal Register. Section 201(b) states that the statutes granting powers to the President in time of emergency shall have effect only during times the President has declared a national emergency and then only if he has acted in accordance with the provisions of the act. This latter stipulation has particular reference to the provisions of section 301 which require that the President specify the laws he or other officers will utilize. Another provision of section 201(b) states that no subsequent enactment will supersede the title unless it does so in specific terms.

Section 202(a) provides for the termination of presidentially declared emergencies by either a concurrent resolution of the Congress or a proclamation by the President. Both the Congress and the President have terminated such emergencies in the past, but the absence of specific statutory procedures has resulted in the failure to terminate the declarations of emergency issued in 1933, 1950, 1970, and 1971. The exceptions to the termination provision for court proceedings are identical to those in section 101(a) discussed above.

Section 202(d) provides for the automatic termination of an emergency if the President does not publicly renew the emergency by means of the publication required by this section.

Subsections (b) and (c) of section 202 establish procedures to insure congressional consideration of a concurrent resolution which would terminate a national emergency. The provisions are similar to those set out in secton 7 of Public Law 93–148, the War Powers Act, of November 7, 1973. Not later than 6 months after a national emergency is declared and not later than the end of each 6-month period thereafter that such emergency continues, each House of the Congress must meet to consider a vote on a concurrent resolution to determine whether that emergency should be terminated. As stated above, while these procedures are patterned after those in the War Powers Act, this statute is not intended to conflict with, supersede or alter any part of the War Powers Act.

Section 202(c) sets forth procedures to be followed in considering the concurrent resolution. The provisions which guarantee prompt congressional action are stated to be an exercise of the rulemaking power of the House and Senate.

Title III states that when the President declares a national emergency, no powers and authorities made available by statute for use in an emergency shall be exercised unless and until the President specifies the provisions of law under which he or other officers will act. Under existing laws, a Presidential emergency declaration automatically activates emergency provisions throughout the United States Code, regardless of the relevance of the statute to the emergency at hand. The new procedure permits the Executive to invoke only the emergency provisions he needs without bringing into force an entire body of law, and insures that the Congress and the public will know what statutes are brought into force.

Title IV specifies the accountability and reporting requirements applicable during a time of national emergency. The President is required to maintain a file of significant orders, and executive agencies are required to keep a record of rules and regulations issued pursuant to a declaration of emergency. This information is to be promptly transmitted to the Congress. In addition, the President is required to report emergency expenditures every 6 months. To provide time for a complete accounting of expenditures, the bill provides the Executive with 90 days from the end of each 6-month period to file his report in which he is expected to explain the nature of and authority for the expenditures.

In a letter to the committee, Mr. William Colby, then Director of the CIA, suggested that the Central Intelligence Agency would not be bound by the reporting requirements of this title. The committee does not acknowledge the existence of such an exemption. The need of the CIA for security and confidentiality can be respected by the Congress as much under this authority as under any other. The act specifically recognizes the need to "assure confidentiality where appropriate." The committee believes the CIA can comply with the requirement of the act by reporting to its oversight committee or committees. (Copies of Mr. Colby's letter and Senator Church's response, directed to Senator Ribicoff, are set forth in Appendix A of this report.)

Title V deals with the repeal and continuation of certain emergency powers and statutes. Section 501 provides for the repeal or amendment of eight existing laws which have been found to be superseded or obsolete. The provisions of section 501 are as follows:

> Subsection (a) strikes paragraph 10 of section 349(a) of the Immigration and Nationality Act, which provides for the expatriation of persons remaining outside the jurisdiction of the United States in time of war or national emergency to avoid service in the military. The Supreme Court in *Kennedy* v. *Mendoza Martinez*, 372 U.S. 144 (1963), declared the authority to be unconstitutional.
>
> Subsection (b) deletes clause 4 of section 2667(b) of title 10, which requires that leases of nonexcess property of a military department must include a provision making the lease revocable during a national emergency. The change allows military departments the option to decide whether to include a provision making leases of nonexcess property revocable during a national emergency declared by the President.
>
> Subsection (c) repeals a 1947 joint resolution dealing with the regulation of consumer credit. The provisions of the act are obsolete, since, under section 1904 of title 12, the President is empowered to authorize the Board of Governors of the Federal Reserve System to regulate extensions of credit.
>
> Subsection (d) repeals section 5(m) of the Tennessee Valley Authority Act of 1933, which bars the sale of TVA products outside of the United States except to the Government for military use or to its allies in case of war or until six months after the termination of the Korean emergency. The committee has been advised that the provisions of subsection (m) have no present application.
>
> Subsection (e) repeals section 1383 of title 18, which provides criminal penalties for persons entering, remaining in, leaving, or committing any act in a military area or military zone contrary to applicable restrictions prescribed by Executive Order or the

Secretary of the Army where it appears that the individual knew of the restrictions and acted in violation thereof. This authority permits the President to establish defensive land areas, such as occurred when Americans of Japanese ancestry were interned during World War II. The recommendation that section 1383 be repealed stems from the committee's conviction that such powers are inappropriate in peacetime and that repeal is consistent with previous congressional action.

Subsection (f) strikes subsections (b), (c), (d), (e), and (f) of section 6 of the act of February 28, 1948, the Public Health Service Act, which deals with the promotion of Public Health Service officers. The committee was advised that the provisions are obsolete.

Subsection (g) repeals section 9 of the 1946 Merchant Ship Sales Act, which deals with price adjustment for prior sales to citizens of the United States. The committee has been advised that the section has no current application.

Section 502 exempts certain provisions of law from the force of the legislation, subject to further investigation by the standing committees of the House and Senate.

The exempted laws were enacted to meet emergency situations. Because of the prolongation of emergency rule in the United States, many government departments have come to depend on these laws for their day-to-day operations. As a result, abrupt termination of such provisions would disrupt activities deemed to be essential to the functioning of the government. To avoid such disruption and to allow careful consideration of the statutes in question and enactment of permanent law where appropriate, the committee recommends that these authorities be exempted from the effect of the legislation.

Under section 502(a), the following provisions of law are exempted from the force of this act:

Clause 1 lists section 5(b) of the act of October 6, 1917, the Trading with the Enemy Act [12 U.S.C. 95a and 50 U.S.C. App. 5(b)]. At hearings, administration spokesmen cited the continuing importance of section 5(b) which provides for the administration and regulation of both transactions in foreign exchange of gold and silver and property transfers in which any foreign country or national thereof has an interest.

Clause 2 continues in effect the provisions of the act of April 28, 1942 (40 U.S.C. 278b). This act provides for an exception to the existing provisions of law concerning maximum rental of leases in cases relating to vital leases during a war or national emergency. The GSA requested the continuation of the authority until permanent legislation to the same effect can be enacted.

Clause 3 continues in effect the provisions of the act of June 30, 1949 (41 U.S.C. 252). Subsection (c)(1) of the act contains an exception to a requirement of advertising purchases or contracts when it is determined to be in the public interest during a period of national emergency. The GSA requested extension of this authority.

Clauses 4 and 5 continue in effect sections 3477 and 3737 of the Revised Statutes (31 U.S.C. 203 and 41 U.S.C. 15). Both sections concern the assignment of claims. The GSA requested continuation of the authorities since they have proven important in the financing of government contracts. These sections permit claims for money due or to become due a contractor with the government to be assigned to a bank, trust company or other financial institution.

Clauses 6 and 7 extend the authority provided in Public Law 85–804 (50 U.S.C. 1431–1435) and section 2304(a)(1) of title 10, United States Code. The authorities concern the amendment of military contracts and the suspension of normal bidding requirements.

Clause 8 continues the provisions set forth in sections 3313, 6386 (c), and 8313 of title 10, United States Code. These three sections provide the authority to maintain MIAs on active duty until their status is finally determined.

In section 502(b) the appropriate standing committees of the House and Senate are directed to investigate the authorities continued in section 502(a) and to make recommendations with respect thereto within 270 days following the enactment of the National Emergencies Act.

The circumstances under which most of these laws were enacted, and their subsequent usage often in ways not envisioned in the original legislative histories, underline the necessity for immediate review and evaluation of these statutes.

History of Legislation

At the beginning of the 92d Congress, interest was expressed in the Senate in examining emergency powers available to the Executive. Thereafter, Senator Charles McC. Mathias, Jr., introduced Senate Concurrent Resolution 27 to establish a special joint committee to study the effect of terminating the state of emergency declared by President Truman in 1950 during the Korean War. In May 1972, Senator Mathias and Senator Frank Church introduced a Senate resolution calling for the creation of a Senate Special Committee on the Termination of the National Emergency. The resolution was subsequently approved, and the special committee began work on January 6, 1973. Senators Mathias and Church were designated as cochairmen, and Senators Hart, Pell, Stevenson, Case, Pearson, and Hansen were appointed to the committee. The mandate of the committee, as expressed in its authorizing resolution (S. Res. 9), was

> to conduct a study and investigation with respect to the matter of terminating the national emergency proclaimed by the President of the United States on December 16, 1950, as announced in Presidential Proclamation Numbered 2914, dated the same date.

Enlisting the aid of legal scholars, executive departments and agencies, and the Library of Congress, the special committee launched an extensive study. The committee held three sets of public hearings on the history of emergency government in the United States and constitutional problems created thereby.

The committee found that the whole field of emergency statutes and procedures was in disarray. Four emergency proclamations, issued in 1933, 1950, 1970, and 1971, had never been revoked; there was little historical guidance for declaring, administering, or terminating states of national emergency; and no current, comprehensive record of statutes effective during times of emergency existed. The enlarged task that the committee confronted led to its being redesignated the Special Committee on National Emergencies and Delegated Emergency Powers.

The committee has since issued several publications designed to provide an understanding of national emergency laws and procedures and provide the basis for legislation. One compilation provides a listing of "Emergency Power Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency" (S. Rept. 93–549). This report lists all the statutes which could be utilized under a declaration of national emergency as well as similar authority, not dependent on a declaration of emergency. To make such a compilation, the committee relied upon the Air Force's LITE system to conduct a computer search of the United States Code and studied all 87 volumes of the statutes-at-large.

A second document, "Executive Orders in Times of War and National Emergency," is the result of an examination of the collections of proclamations and Executive orders found at the Library of Congress and the Federal Register. In addition, "A Brief History of Emergency Powers in the United States," prepared by the Library of Congress, was issued as a committee print. The committee also published a handbook containing evaluations of all emergency statutes. These evaluations were made by standing committees of the Senate and by executive departments and agencies.

The culmination of the special committee's efforts was the National Emergencies Act. Introduced by the Senate special committee on August 2, 1974, S. 3957 was sponsored by Senators Church, Mathias, Hart, Pell, Stevenson, Case, Pearson, Hansen, Ervin, Chiles, Williams, Muskie, Javits, Ribicoff, and Roth. The Senate Committee on Government Operations reported the bill without amendment on September 30, 1974 (S. Rept. 93–1193). On October 7, 1974, during debate on the measure in the Senate, Senator Mathias offered amendments incorporating changes recommended by the Office of Management and Budget and agreed to by the Government Operations Committee. The amendments provided for:

(1) Extension of the termination date for existing emergencies from nine to twelve months from enactment;

(2) A semiannual review and decision by Congress on whether to end an emergency, rather than automatic termination of states of emergency;

(3) Reduction of the number of statutes to be repealed;

(4) Exemption of six statutes considered essential by the executive branch and provision for their review by appropriate congressional committees;

(5) Requirements for an accounting of expenditures incurred in the exercise of national emergency statutes.

The amended legislation passed the Senate by voice vote on October 7, 1974, and was referred to the House Committee on the Judiciary which took no further action. On March 6, 1975, Senator Mathias, for himself and Senator Church, introduced S. 977, which is nearly identical to S. 3957 of the 93d Congress. At the same time, Representative Rodino introduced an identical bill, H.R. 3884, which was referred to the House Judiciary Committee. H.R. 3884 was amended by the House Judiciary Committee and passed the House on September 4, 1975, with some floor amendments.

HEARINGS

The committee held hearings on H.R. 3884 on February 25, 1976. Senators Church and Mathias appeared in support of the measure. Their testimony was related primarily to an analysis and summary of the problems sought to be resolved by the legislation and a review of their work as co-chairmen of the Senate Special Committee on National Emergencies and Delegated Emergency Powers. In addition, several communications relative to the measure were inserted in the hearing record.

SECTION-BY-SECTION ANALYSIS

H.R. 3884, the National Emergencies Act, contains five titles.

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

Section 101 provides for the termination of all powers and authorities conferred by statutes dependent upon a declared state of national emergency. A 2-year delay in the effective date of the termination of emergency powers and authorities is designed to allow time to enact permanent law where needed. The section defines "any national emergency in effect" as any one declared by the President.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

Subsection (a) of section 201 provides that with respect to Acts of Congress authorizing the exercise, during a period of a national emergency, of any special or extraordinary power, the President is authorized to declare such a national emergency. Any such proclamation must be "transmitted to the Congress and published in the Federal Register."

Subsection (b) declares that any statute that becomes effective in time of declared national emergency, shall only be lawful if the provisions of this act are complied with. No future act will supersede this act unless it does so in specific terms and declares that the purposes of the new law is to supersede provisions of this act.

Section 202 provides for the termination of a declared state of emergency, either by the Congress by concurrent resolution, or by Presidential proclamation. Congress would consider concurrent resolutions at 6-month intervals. This section sets forth the procedures to be followed by Congress in considering these resolutions, and provides that they are to be deemed a part of the rules of each House. A final clause provides that any national emergency declared by the President, not otherwise previously terminated, "shall terminate on the anniversary of the declaration of that emergency if, within the 90-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that the emergency is still in effect."

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

Section 301 provides that when the President declares a national emergency, no powers or authorities made available by statute shall be exercised unless and until the President specifies the provisions of law under which he will act. While specification may be made in the declaration or in one or more contemporaneous or subsequent Executive orders, no powers may be made available until such specification.

TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

Section 401 provides that when the President declares a national emergency, or the Congress declares war, the President shall maintain a file and index of all significant Presidential orders and each executive agency shall maintain a file of all rules and regulations issued during the emergency or war. These orders, rules, and regulations are to be transmitted to the Congress. This section further requires that, after the declaration of a national emergency or declaration of war, the President shall transmit to the Congress, within 90 days after each 6-month period following a declaration, a report of total expenditures which are attributable to powers and authorities exercised under such declarations. A final report is required not later than 90 days after the termination of the emergency or war.

TITLE V—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

Sections 501 and 502 repeal and continue in effect certain stated emergency powers and other statutes as appropriate.

Agency Comments

Agency interests and concerns were coordinated by the special committee in connection with the drafting and consideration of the 93d Congress bill, S. 3957, which passed the Senate in October 1974. Most of the coordinating work was performed in cooperation with the Office of Management and Budget and the Department of Justice.

In the 94th Congress, this committee solicited comments from various agencies and departments. Where appropriate, some of their recommendations were incorporated in S. 977, the companion bill to H.R. 3884. These comments are set forth in Appendix B.

Estimated Cost of Legislation

It is not expected that enactment of this legislation will require any significant additional expenditures.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no changes is proposed is shown in roman):

TITLE 8—ALIENS AND NATIONALITY, UNITED STATES CODE

* * * * * * *

PART III—LOSS OF NATIONALITY

§ 1481. Loss of nationality by native-born or naturalized citizen; voluntary action; burden of proof; presumptions.

(a) From and after the effective date of this chapter a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

(1) * * *.

* * * * * * *

⟦(10) departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.⟧

TITLE 10—ARMED FORCES, UNITED STATES CODE

* * * * * * *

Chapter 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

* * * * * * *

§ 2667. Leases: non-excess property.

(a) * * *.

* * * * * * *

(b) A lease under subsection (a)—

(1) * * *.

* * * * * * *

[(4) must be revocable by the Secretary during a national emergency declared by the President; and]

* * * * * * *

TITLE 12—BANKS AND BANKING, UNITED STATES CODE

* * * * * * *

Chapter 3—FEDERAL RESERVE SYSTEM

DEFINITIONS, ORGANIZATION, AND GENERAL PROVISIONS AFFECTING SYSTEM

* * * * * * *

[§ 249. Regulation of consumer credit.

[After November 1, 1947, the Board of Governors of the Federal Reserve System shall not exercise consumer credit controls pursuant to Executive Order Numbered 8843, and no such consumer credit controls shall be exercised after such date except during the time of war beginning after August 8, 1947, or any national emergency declared by the President after August 8, 1947.]

* * * * * * *

TITLE 16—CONSERVATION, UNITED STATES CODE

* * * * * * *

Chapter 12A—TENNESSEE VALLEY AUTHORITY

* * * * * * *

§ 831d. Directors; maintenance and operation of plant for production, sale, and distribution of fertilizer and power.

The board is authorized—

(a) * * *.

* * * * * * *

[(m) No products of the Corporation except ferrophosphorus shall be sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war or, until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, or until such earlier date or dates as the Congress by concurrent resolution or the President may provide but in no event after April 1, 1953, to nations associated with the United States in defense activities.]

14

TITLE 18—CRIMES AND CRIMINAL PROCEDURE, UNITED STATES CODES

*   *   *   *   *   *   *

Chapter 67—MILITARY AND NAVY

[§ 1383. Restrictions in military areas and zones.

[Whoever, contrary to the restrictions applicable thereto, enters, remains in, leaves, or commits any act in any military area or military zone prescribed under the authority of an Executive order of the President, by the Secretary of the Army, or by any military commander designated by the Secretary of the Army, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.]

TITLE 42—THE PUBLIC HEALTH AND WELFARE, UNITED STATES CODE

*   *   *   *   *   *   *

Chapter 6A—THE PUBLIC HEALTH SERVICE

SUBCHAPTER I—ADMINISTRATION

§ 211a. * * *

*   *   *   *   *   *   *

[§ 211b. Promotion of commissioned officers.

[(a) Temporary promotions prior to July 1, 1948.

[Except as provided in the third and fourth paragraphs of this section, no promotion shall be made under section 211 of this title, prior to July 1, 1948. Until that date officers of the Regular Corps may receive temporary promotions to higher grades with the pay and allowances thereof pursuant to section 211(a)(1) of this title in force prior to February 28, 1948, notwithstanding the termination, prior to such date, of the war and of the national emergencies proclaimed by the President. Any officer holding, on June 30, 1948, an appointment pursuant to such section to a higher temporary grade shall continue in such grade until such appointment is terminated, as the President may direct.

[(b) Service credit.

[Effective as of February 28, 1948, each officer of the Regular Corps on such date, in addition to the credit he has under preexisting legislation for purposes of promotion, shall be credited with three years of service.

[(c) Promotion based on years of service; effective date; examination; service credit.

[Officers of the Regular Corps who have, or who on or before July 1, 1948, will have, the years of service prescribed in paragraph (2) of section 211(d) of this title, for promotion to the senior assistant, full, or senior grade, shall be recommended to the President for such promotion, to be effective as of July 1, 1948, whether or not vacancies exist in such grade. Such promotions shall be made without examination, except that no promotions shall be made to the senior grade or any grade immediately below a restricted grade until the officer is found qualified for promotion pursuant to subsection (c) of section 211 of this title. No promotion shall be made pursuant to this paragraph to any grade in any professional category if such grade has been made a restricted grade pursuant to subsection (b) of section 211 of this title. For purposes of seniority an officer promoted under this paragraph shall be credited with the years of service in the grade to which promoted equal to the excess of his years of service on the date of promotion over the years of service required for promotion to such grade under paragraph (2) of section 211(d) of this title.

[Officers in the junior assistant grade in the Regular Corps who have, or who on or before July 1, 1948, will have four or more years of service in the junior assistant grade, shall be recommended to the President for promotion to the assistant grade, to be effective as of July 1, 1948, without examination and whether or not vacancies exist in such grade. For purposes of promotion and seniority in grade, an officer promoted under this paragraph shall be credited with the years of service equal to the excess of his years of service on the date of promotion over four years.

[(d) Service for purpose of seniority.

[For purposes of seniority, any officer of the Regular Corps of the Public Health Service on February 28, 1948, shall be considered as having had service in the grade which he holds on such date equal to the excess of the service credited to him for promotion purposes over the length of service required under section 211(d)(2) of this title, for promotion to such grade.

[(e) Term or tenure of office unaffected prior to July 1, 1948.

[Except as provided in the third and fourth paragraphs of this section, the provisions of this section shall not, prior to July 1, 1948, affect the term or tenure of office (including any office held under temporary promotion) of any commissioned officer of the Service in office upon February 28, 1948.]

* * * * * * *

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE, U.S. CODE

* * * * * * *

16

SALE OF SURPLUS WAR-BUILT VESSELS

(Act Mar. 8, 1946, Ch. 82, Stat. 41)

* * * * * * *

[§ 1742. Price adjustment on prior sales to citizens.

[(a) Form, manner, and time of application.

[A citizen of the United States who on the date of the enactment of this Act [March 8, 1946]—

[(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

[(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

[(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46], and which was delivered by its builder after December 31, 1940; or

[(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46],

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicaable prewar domestic costs in the Federal Register under section 3(c) of this Act [section 1736(c) of this Appendix]. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V [subchapter V of chapter 27 of Title 46] (including section 504 [section 1154 of Title 46] of title VII of the Merchant Marine Act, 1936, as amended [subchapter VII of chapter 27 of Title 46].

[(b) Determination of amount.

[Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act [March 8, 1946], and not before that time. The amount of such adjustment shall be determined as follows:

[(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment [March 8, 1946]. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

[(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

[(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act [March 8, 1946] over the sum of the cash payment retained by the United States under, paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of 3½ per centum per annum.

[(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act [March 8, 1946] to the extent not credited under paragraph (1).

[(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of 3½ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act [March 8, 1946]) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

[(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act [March 8, 1946], and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act [March 8, 1946]).

[(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8 [section 1741 of this Appendix].

[(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c) (1) of this section, and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant, resulting from the application of subsection (c) (1) of this section. If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

[For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended [section 1154 of Title 46], shall be the net cost of the vessel to the owner.

[(c) Conditions binding on applicant.

[An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect that—

[(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act [March 8, 1946] for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b) (6) of this section shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (5) and (6) of this section shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act [March 8, 1946];

[(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act [March 8, 1946] under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment [March 8, 1946] and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act [March 8, 1946], depreciated to the date of loss at the rate of 5 per centum per annum: *Provided*, That the provisions of this subsection (c) (2) [of this section] shall not apply to any such charter party executed on or after the date of enactment of this amendatory proviso [August 6, 1956]; and the Secretary of Commerce is directed to modify any adjustment agreement to the extent necessary to conform to the provisions of this amendatory proviso; and

[(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on

May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act [March 8, 1946]; the compensation to be paid to the purchaser, his receivers, trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

[(d) Applicability of other laws.

[Section 506 of the Merchant Marine Act, 1936, as amended [section 1156 of Title 46], shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act [March 8, 1946].]

ROLLCALL VOTE IN COMMITTEE

In compliance with section 133 of the Legislative Reorganization Act of 1946, as amended, the rollcall vote taken during committee consideration of this legislation is as follows:

Yeas: (10)	**Nays: (0)**
McClellan	
Muskie	
Chiles	
Nunn	
Glenn	
Percy	
Javits	
Brock	
Roth	
Ribicoff	

APPENDIX A

Central Intelligence Agency,
Washington, D.C.,
September 19, 1975.

Hon. Abraham Ribicoff,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This is in response to your request for the views and recommendations of this Agency on S. 977, the "National Emergencies Act." The act would terminate those national emergencies presently in effect, and establish procedures for the establishment, operation, and termination of future declared national emergencies.

The Central Intelligence Agency derives its responsibilities and autority from 50 U.S.C. 403, *et seq.* It would not be affected by the termination of existing states of national emergency. Therefore, I have no comment on the bill, except for section 501.

Section 501 of the bill establishes accountability and reporting requirements for the President and Federal agencies during a declared state of war or national emergency. Subsections (a) and (b) require Executive agencies to maintain a file and index of all rules and regulations issued pursuant to declarations of war or national emergency. These rules and regulations are to be transmitted to the Congress promptly under means to assure confidentiality where appropriate. I have no objection to this provision, with the understanding that Agency activities conducted pursuant to 50 U.S.C. 403, although occurring during a declared state of war or national emergency, are not covered by section 501 of S. 977 but are reported to the Congress under normal procedures.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby,
Director.

U.S. Senate,
Special Committee on National Emergencies
and Delegated Emergency Powers,
Washington, D.C., March 1, 1976.

Hon. Abraham Ribicoff,
Chairman, Committee on Governmental Operations, Dirksen Senate Office Building, Washington, D.C.

Dear Senator Ribicoff: I understand that William Colby, while Director of the CIA, wrote the Government Operations Committee of the U.S. Senate to the effect that CIA activities conducted pursuant to

50 U.S.C. 403, although occurring during a state of war or national emergency, would not be covered by the reporting requirement of the National Emergencies Act but would be reported to the Congress under other procedures which he did not detail.

Section 403 of title 50 of the United States Code, the basic charter of the CIA, does not exempt the CIA from the reporting provisions of the National Emergencies Act. The reporting exemptions which are contained in that section were designed to prevent disclosure in an official U.S. Government publication, of information which would reveal the size or personnel strength of the CIA. The National Emergencies Act does not require the public reporting of such classified information.

The agency is, however, properly concerned about disclosure of classified information. The National Emergencies Act specifically provides that rules and regulations covered by the act "shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate." The proper course is to stipulate that the CIA need only report its rules and regulations to the appropriate oversight committee—in the case of the Senate, the oversight committee which the Government Operations Committee will shortly recommend be established for the CIA.

I would also draw attention to the fact that the National Emergencies Act requires that only regulations issued "pursuant to a national emergency" be reported, not that all such authorities be made available. In the case of the Central Intelligence Agency, these new rules and regulations are likely to be quite limited.

Sincerely,

Frank Church.

APPENDIX B

Executive Office of the President,
Office of Management and Budget,
Washington, D.C., September 15, 1975

Hon. Abraham Ribicof,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This is in reply to your request of April 22, 1975, for the views of the Office of Management and Budget on S. 977, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

S. 977 is substantially similar to H.R. 3884 which was passed in the House on September 4, 1975, and referred to your committee on September 5, 1975. While the provisions of S. 977 are generally acceptable, the House bill incorporates a number of amendments proposed by the executive branch.

Both bills, however, contain one feature in common which the Administration does not support. Section 202(a)(1) of each bill provides that Congress can terminate future, Presidentially-declared national emergencies by concurrent resolution. As you know, the executive branch, on many previous occasions, has objected to the use of similar concurrent resolution provisions in legislation on constitutional grounds because such provisions circumvent the President's role in the legislative process as provided in article I, section 7 of the Constitution.

Finally, in addition to the emergency authorities in existing law which would be excepted from termination under the provisions of either S. 977 or H.R. 3884, several Departments, such as the Department of Transportation, have proposed that certain other emergency authorities should be similarly exempt.

Accordingly, except for the concurrent resolution provision discussed above, and subject to the Committee's consideration of the additional authorities proposed for exclusion from a general termination of current emergency powers, the Office of Management and Budget would have no objection to enactment of either S. 977 or H.R. 3884.

Sincerely,

James M. Frey,
Assistant Director for Legislative Reference.

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COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 6, 1976.

B-178364.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to your request of April 22, 1975, for our views on S. 977, 94th Congress, a bill to terminate certain authorities with respect to national emergencies still in effect and to provide for orderly implementation and termination of future national emergencies.

Section 602(a)(4) provides that the provisions of the proposed bill do not apply to the powers and authorities conferred by the Act of June 30, 1949 (41 U.S.C. § 252). The authority conferred upon Executive agencies (except the Department of Defense, the Coast Guard and the National Aeronautics and Space Administration) by 41 U.S.C. § 252(c)(1) is used to negotiate contracts without advertising to assist labor surplus areas, to unilaterally set-aside contracts with small business concerns and to further the U.S. Balance of Payments Program. Similar authority is provided to the Departments of the Army, the Navy and the Air Force, the Coast Guard and the National Aeronautics and Space Administration by 10 U.S.C. § 2304(a)(1) (1970). This exception to advertising requirements is used for labor surplus set-aside programs, disaster area programs, small business set-asides after unilateral determinations and Balance of Payments Restricted Advertising. The authority of section 2304(a)(1) is not excluded from the provisions of the bill, and if the bill is enacted, legislation will be necessary for these agencies to continue the abovementioned programs where no other negotiating authority is available. The committee may wish to consider exempting the powers and authorities of 10 U.S.C. § 2304 from the provisions of S. 977.

We note that, if enacted, the proposed bill will eliminate the power of the President to authorize Government agencies that exercise functions in connection with the national defense to enter into, amend, or modify contracts without regard to other provisions of law, conferred by Pub. L. No. 85-804 (Act of August 28, 1958, 72 Stat. 972, 50 U.S.C. §§ 1431-35). The Commission on Government Procurement (with one Commissioner dissenting) recommended that this authority be made permanent and not be limited to periods of national emergency. See Report of Commission on Government Procurement, Volume 4, pp. 51-60.

The objective of providing regular and consistent procedures by which national emergency powers are called into force and terminated, thereby according greater visibility and improving the exercise of effective congressional oversight, is one which we favor.

Sincerely yours,

R. F. KELLER,
Deputy Comptroller General of the United States.

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General Counsel of the Department of Defense,
Washington, D.C., February 23, 1976.

Hon. Abraham A. Ribicoff,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This is in reply to your request for an expression of the views of the Department of Defense on S. 977, 94th Congress , an Act "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

S. 977 would terminate, one year after its enactment, any authority conferred on an executive or other federal agency by law or executive order as a result of the existence of a state of national emergency on the date of enactment. The bill would authorize the President, upon certain findings, to proclaim the existence of a future national emergency but would require the proclamation to be transmitted to Congress and published in the Federal Register. Such a future national emergency would terminate upon a concurrent resolution by Congress or by a proclamation of the President. Thus a future national emergency could be terminated by either Congress or the President.

As a prerequisite to the exercise of any powers or authorities made available by statute for use in the event of an emergency, the bill would require the President to specify the provisions of law under which he or other officials of the Government propose to act.

Enumeration of such powers and authorities would be required to be transmitted to Congress and published in the Federal Register. Further, the President would be required to maintain a file and index of all significant presidential orders and proclamations and each federal agency would be required to maintain a file or index of all rules and regulations issued during future national emergencies. Copies of all such presidential and federal agency issuances would be required to be transmitted to Congress promptly.

World and national conditions have changed since President Truman officially proclaimed the state of national emergency in 1950 incident to the commencement of hostilities in Korea. Many authorities which were used then for the first time were regarded as extraordinary. Since then, experience has demonstrated a need for these authorities in the regular conduct of the day-to-day operations of the Department of Defense. The desirability of terminating existing states of emergency is recognized and no objection to their termination is entertained by the Department of Defense. However, there are certain continuing needs, outlined below, which are accommodated by the existing national emergency proclaimed by President Truman in 1950 but which are not specifically provided for in S. 977.

First, there are 863 members of the armed forces who are still unaccounted for as a result of their participation in the recent hostilities in Southeast Asia. Although the Department of Defense is making every effort to resolve the uncertain status of these men, several factors have hampered this effort so that it is not possible to predict the exact date by which their status will be finally determined. One of these factors is the decree of a federal court in a case styled *McDonald*

v. *McLucas* which precludes the Secretaries of the military departments from changing the status of those now classified as missing in action to killed in action until the primary next of kin are afforded an opportunity to attend a hearing with counsel to present whatever evidence they deem relevant and to examine service files. Only the emergency authority of 10 U.S. Code 3313, 6386(c) and 8313 authorizes the suspension of mandatory separation and retirement requirements which would otherwise be applicable to allow some of these members to remain in the armed forces until they return or are accounted for. Whether or not their situation is viewed as warranting continuation of a national emergency, it would be inequitable to force their separation or retirement while they are still unaccounted for.

In the field of personnel administration, the emergency authority of 10 U.S.C. 3444 and 8444 has been used to grant relief, by way of temporary appointment, to officers in the chaplain, judge advocate and medical fields who, because of constructive service credit in their specialties, are considered for permanent promotion earlier than their line officer counterparts and whose separation for failure of promotion might become mandatory under conditions inconsistent with the needs of the armed forces or fairness to the officers. Legislation which would, among other things, provide a solution in permanent law for this problem has been introduced in the Congress (H.R. 7486 and S. 2424, Defense Officer Personnel Management Act, and H.R. 7769, Uniformed Services Retirement Modernization Act) and hearings have begun on H.R. 7486. However, the legislative changes which these bills would effect are so extensive that it would not be realistic to expect early enactment.

In addition to these problems which would result from allowing the emergency authority now provided by 10 U.S.C. 3444 and 8444 to lapse, the President, as commander in chief of the armed forces, would have no authority to grant temporary appointments to truly exceptional officers of the Army or Air Force. For example, the President used this authority to extend a temporary appointment to the next higher grade to the Air Force astronauts who successfully completed suborbital or orbital flights. Continuation of this latitude is needed so that exceptional individual contributions can still be recognized through temporary appointments.

Termination of emergency authority under 10 U.S.C. 3444 and 8444 would also deny to the Army and Air Force the only authority available in some cases to appoint alien doctors as officers to meet increasingly critical shortages of military medical personnel.

Termination of the 1950 national emergency would also terminate entitlement to disability retirement or separation benefits under 10 U.S.C. 1201 and 1203 for members with less than 8 years of service whose disability of 30 percent or more, although incurred in line of duty while on active duty, was not the proximate result of the performance of active duty. Imposition of this limitation—which would affect only the junior officers and enlisted men—is particularly untimely when the armed forces are endeavoring to meet their manpower needs through voluntary means. Continuation of the authority to retire or separate military personnel with less than 8 years of service who become unfit for further service by reason of a disability incurred in line of duty, is needed as part of the military disability system.

Termination of the national emergency would also terminate the authority of the Department of Defense (and certain other agencies) under Public Law 85–804 (50 U.S.C. 1431–1435) to correct mistakes in contracts, to formalize informal commitments, to indemnify contractors against losses or claims resulting from unusually hazardous risks to which they might be exposed during the performance of a contract and for which insurance, even if available, would be prohibitively expensive, and to grant other extraordinary contractual relief. Loss of the indemnification authority, in particular, would have an immediate adverse impact upon essential programs. During the calendar year 1974 the military departments included indemnification clauses under this authority in 128 contracts associated with nuclear-powered vessels, nuclear-armed guided missiles, experimental work with nuclear energy, handling of explosives and performance in hazardous areas. The Commission on Government Procurement, established by Public Law 91–129, has recommended that the authorizations of P.L. 85–804 be made available generally rather than being dependent upon the existence of a state of war or national emergency. But, here also, enactment of the Commission's recommendation in the near future does not appear likely.

S. 977 would adversely affect defense contracting in another way, that is, in denying the emergency exception to the requirement for advertising procurements not otherwise authorized to be negotiated. Cf. 10 U.S.C. 2304(a)(1). This exception is now narrowly limited in its application by the pertinent Armed Services Procurement Regulation (32 CFR 3.201), but its application affects major social and economic policies—the policies to favor labor surplus and disaster areas and small business and to achieve a balance of payments favorable to the United States.

Continuation of several emergency authorities governing personnel administration in the naval service is also needed. These authorities include 10 U.S.C. 5231(c), which suspends existing limitations on the number of admirals and vice admirals of the Navy. If this authority is not continued, the Navy would lose approximately one half of its three- and four-star admirals. Similarly, 10 U.S.C. 5232(b) suspends existing limitations on lieutenant generals of the Marine Corps. If this authority is not continued, the Marine Corps would lose six of the currently authorized eight lieutenant generals. Section 5711(b) of title 10 authorizes the suspension of the statutory limit of 5% below-the-zone selections specified in section 5707(c). Continuation of the authority provided in 10 U.S.C. 5785(b) is needed to suspend time-in-grade Navy and Marine Corps requirements for promotion to all grades except lieutenant and lieutenant commander. This statute is also the authority for suspension of the mandatory line fraction for promotion of staff corps officers to grades below rear admiral. Section 5787 of title 10 provides for temporary promotions in the Navy. Failure to retain this authority would require approximately 650 limited duty officers in the grade of lieutenant commander to revert to the grade of lieutenant. Discontinuance of this authority would also require Senate confirmation of all Regular promotions to lieutenant (junior grade).

In view of the need for continuation of the authorities referred to above, the Department of Defense recommends that any legislation terminating emergency powers exempt the cited statutes from its effect in order to preserve the substantive provisions which are now needed but which would be lost by termination of the 1950 national emergency.

On September 4, 1975, the House of Representatives passed H.R. 3884, a bill that in its original form was virtually identical with S. 977. In the course of hearings on H.R. 3884 before the House Judiciary Committee's Subcommittee on Administrative Law and Governmental Relations, the Deputy General Counsel made a statement which presented in detail the position of the Defense Department. For your convenience a copy of his statement is enclosed. The House of Representatives adopted our recommendations with respect to needed exemptions in contracting authority (cf. pp. 2–4 of the statement), continuation of the statutory emergency authority which suspends mandatory separation and retirement as applied to those members of the armed forces who are still unaccounted for in Southeast Asia (cf. p. 7); deletion of the reference to section 673 of title 10, United States Code, as inappropriate (cf. p. 8); and extension of the period for reporting to Congress the quarterly expenditures incurred in future national emergencies from thirty days after the end of each quarter to ninety days (cf. pp. 8–9). In addition, at our informal suggestion that provision of H.R. 3884 which would have terminated powers authorized by the existing national emergency one year from the date of enactment was changed to provide for termination two years from the date of enactment. This longer grace period is needed to accommodate the orderly transition to normal procedures. It is strongly recommended that the Senate also adopt these changes which were concurred in by the House of Representatives.

There were several other exemptions from the reach of H.R. 3884 which were recommended by the Department of Defense but which were not accepted by the House of Representatives. These items relate to Defense organization (cf. pp. 4–7) and disability retirement or separation benefits for military members with less than eight years of service (cf. pp. 7–8). It is recommended that the Senate give favorable consideration to these items.

In general, the Department of Defense is in accord with the S. 977 goal of repealing obsolete or unnecessary emergency laws. Therefore, subject to the foregoing reservations and recommendations, this Department does not object to enactment of S. 977.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

RICHARD A. WILEY.

Enclosure.

STATEMENT OF LEONARD NIEDERLEHNER, DEPUTY GENERAL COUNSEL, DEPARTMENT OF DEFENSE ON H.R. 3884

Mr. Chairman and Members of the Committee: I am very pleased to have the opportunity to offer comments of the Department of Defense on H.R. 3884, "A Bill to terminate certain authorities with respect to National Emergencies still in effect, and to provide for orderly implementation and termination of future National Emergencies."

The Department of Defense favors the goal of H.R. 3884 to terminate obsolete or unnecessary authorities based upon states of emergency. However, a relatively small number of the authorities currently dependent upon a state of emergency affect contracting procedures, personnel entitlements, and organizational structure of the Department of Defense; and it is believed that the Congress will want to enact permanent legislation to treat with these various subject matters. Legislative proposals have been made to the Congress dealing with most of these items and it is hoped that they will receive attention in the near future. However, we recommend that they be exempted from the broad sweep of the pending bill until such time as the Congress has an opportunity to consider whether, and in what form, these authorities should be enacted to permanent law.

World and national conditions have changed since President Truman officially proclaimed the state of national emergency in 1950 incident to the commencement of hostilities in Korea. Many authorities which were used then for the first time were regarded as extraordinary. Since then, experience has demonstrated a need for these authorities in the regular conduct of the day-to-day operations of the Department of Defense. The desirability of terminating existing states of emergency is recognized and no objection to their termination is entertained by the Department of Defense. However, there are certain continuing needs which are accommodated by the existing national emergency proclaimed by President Truman in 1950 but which are not specifically provided for in H.R. 3884. The bill should provide an exception for each of the items I shall now refer to until such time as the Congress is able to consider permanent legislation to meet the particular need.

1. *Contracting Authority*

(a) Since 1941, there has been available to the Department of Defense authority to deal with unusual contract circumstances. Termination of the national emergency would terminate such authority of the Department of Defense (and certain other agencies) under Public Law 85–804 (50 U.S.C. 1431–1435), the current form of the 1941 statute. This statute provides authority to correct mistakes in contracts, to formalize informal commitments, to indemnify contractors against losses or claims resulting from unusually hazardous risks to which they might be exposed during the performance of a contract and for which insurance, even if available, would be prohibitively expensive, and to grant other extraordinary contractual relief. The Commission on Government Procurement, established by Public Law 91–129, recommended to the Congress in 1972 that the authorizations of Public Law 85–804 be made available generally rather than being dependent upon the existence of a state of war or national emergency.

(b) The procurement process wthin the Armed Services is utilized to accomplish certain major social and economic policies by the placement of contracts in labor surplus areas and in disaster areas, by letting contracts to favor small business, and to achieve a balance payments favorable to the United States. These collateral policies are achieved through the emeregncy exception to the requirement for formal advertisement under the Armed Forces Procurement Act (10 U.S.C. 2304(a)(1)). The use of this emergency exception is limited by regulation (32 CFR 3–201) to the achievement of the enumerated policies. In the light of the importance attached to these social and economic purposes, Congress should have the opportunity to consider the establishment of appropriate contracting procedures on a permanent basis.

2. *Personnel Administration*

A number of personnel procedures which have become basic to the current military structure are based upon a state of emergency. Major legislative proposals which place many of these personnel procedures on a permanent basis have been proposed but have not been enacted. The latest and most comprehensive of these proposals, the Defense Officer Personnel Management Act, was introduced in January, 1974, but was not acted upon. It will be resubmitted to the new Congress in 1975 and, if passed by the Congress, will cure most of the problems I shall now mention. These problems can be classified under two categories—those that deal with Defense organization and those that deal with personnel entitlements.

a. *Defense Organization*

(1) Retention of the emergency authority of 10 U.S.C. 3444 and 8444 is required for the following purposes:

(a) To provide the authority to make temporary appointments of officers in the Chaplain, Judge Advocate, and Medical fields, who, because of constructive service credit in their specialities, are considered for permanent promotion earlier than line officer counterparts, and whose separation for failure of promotion might become mandatory under conditions inconsistent with the needs of the service.

(b) To provide the authority of the President as Commander in Chief to grant temporary appointments to exceptional officers of the Army or Air Force. (The promotion of the Air Force astronauts.)

(c) To provide the authority to appoint alien doctors in the Army and Air Force as officers to meet critical shortages of military medical personnel.

(2) Over a period of years the personnel structure in the naval service has developed around several emergency authorities which now form the basis of officer management. These authorities include:

(a) 10 U.S.C. 5231(c), which suspends existing limitations on the number of admirals and vice admirals of the Navy. If this authority is not continued, the Navy would lose approximately one-half of its three- and four-star admirals.

(b) 10 U.S.C. 5232(b) suspends existing limitations on lieutenant generals of the Marine Corps. If this authority is not continued, the Marine Corps would lose five of the currently authorized seven lieutenant generals.

(c) 10 U.S.C. 5711(b) authorizes the suspension of the statutory limit of 5% for early promotion selections specified in section 5707(c).

(d) 10 U.S.C. 5785(b) is needed to suspend time-in-grade requirements for promotion to all Navy and Marine Corps grades except lieutenant and lieutenant commander. This statute is also the authority for suspension of the mandatory promotion selection rate provisions for certain staff corps officers to grades below rear admiral.

(e) 10 U.S.C. 5787 provides for temporary promotions in the Navy. Failure to retain this authority would require approximately 650 limited duty officers in the grade of lieutenant commander to revert to the grade of lieutenant. Discontinuance of this authority would also require Senate confirmation of all Regular promotions to lieutenant (junior grade).

b. *Personnel Entitlements*

(1) There are currently 913 members of the armed forces who are listed as missing in action in Southeast Asia. Only the emergency authority of 10 U.S.C. 3313, 6386(c), and 8313 authorizes the suspension of mandatory separation and retirement requirements which would otherwise be applicable to allow some of these members to remain in the armed forces until they return or are accounted for. Whether or not their situation is viewed as warranting continuation of a national emergency, it would be inequitable to force their separation or retirement while they are in a missing status.

(2) Termination of the 1950 national emergency would also terminate entitlement to disability retirement or separation benefits under 10 U.S.C. 1201 and 1203 for members with less than 8 years of service whose disability of 30 per cent or more, although incurred in line of duty while on active duty, was not the proximate result of the performance of active duty. Loss of this eligibility—which would affect only the junior officers and enlisted men—is particularly untimely when the armed forces are endeavoring to meet their manpower needs through voluntary means.

The Department recommends the deletion from the bill of subsection 602(a)(2) "Section 673 of title 10, United States Code;" this statute provides authority to order to active duty members of the Ready Reserve "In time of national emergency declared by the President after January 1, 1953." This statute would not be affected by termination of existing emergencies.

In view of the need for continuation of the authorities I have referred to, the Department of Defense recommends that any legislation terminating emergency powers except the cited statutes from its effect until such time as the Congress has the opportunity to consider the necessity for permanent legislation.

Finally, there is no procedural requirement of H.R. 3884 which is not realistic. I refer to the provision in subsection 501(c) which requires a report to Congress on total expenditures within thirty days after the end of each quarter during a national emergency period. The thirty-day reporting requirement does not provide sufficient time to collect the required data for transmittal to Congress. Ninety days would be more appropriate to accomplish the task properly.

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Department of State,
Washington, D.C., September 11, 1975.

Hon. Abraham Ribicoff,
Chairman, Committee on Government Operations,
U.S. Senate.

Dear Mr. Chairman: Your letter of April 22 invited recommendations on S. 977, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies." This bill is very much the same as S. 3957, passed by the Senate last session.

The Department of State believes that it is appropriate to reexamine the national emergency authorities at this time, to repeal obsolete authorities, and to set criteria for national emergencies which may be declared in the future. S. 977 does this, and at the same time preserves major emergency authorities that are essential to the conduct of foreign relations. The Department is especially interested in section 602 of S. 977 because it preserves essential authorities, in particular section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b) and 12 U.S.C. 95a) which provides the basic legal authority for a number of programs of major foreign policy importance. These include:

1. Foreign Assets Control Regulations (31 C.F.R. Part 500);
2. Cuban Asset Control Regulations (31 C.F.R. Part 515), and
3. Foreign Funds Control Regulations (31 C.F.R. Part 520).

Under these programs, transactions are prohibited which involve persons or property subject to United States jurisdiction and which take place with Cuba, North Viet-Nam, North Korea, and designated nationals of those countries, unless specifically or generally licensed. In addition, property in which those countries or their nationals have an interest has been blocked and is under United States Government control. We also are holding assets of the People's Republic of China blocked before May 1971 and assets of certain Eastern European countries. While the amounts of the blocked assets vary, in some cases it is substantial, for example possibly in excess of $80 million in the case of the People's Republic of China.

An interruption of these programs would seriously prejudice the foreign relations interests of the United States and the interests of thousands of American nationals with outstanding claims against Cuba and the People's Republic of China. One effect of such interruption would be to release the blocked assets. Another would be to authorize transactions now prohibited without regard for the state of United States relations with countries concerned or the underlying United States interests served by these programs. Thus for example, Cuban imports could come into the United States without regard to other economic issues, and relaxation of transaction controls with respect to North Viet-Nam would be without regard to any context of improved bilateral relations. As a result it would become very difficult, if not impossible, to negotiate satisfactory claim settlements, or to realize other United States objectives.

The Department stresses that these are merely the current programs under section 5(b) of the Trading with the Enemy Act and the 1950 proclamation of national emergency. This authority has been utilized in the past for programs which have served their purposes and been terminated, and it may be necessary again. The present international situation has the potential for serious difficulties in international fiscal and economic matters, particularly energy, which may call for measures requiring recourse to this authority. Therefore, the Department believes it is essential that section 5(b) of the Trading with the Enemy Act be specifically exempted as section 602 now provides.

The Department of State has not opposed, and does not oppose, the replacement of section 5(b) by other permanent legislation. We do believe that there are a number of serious legal and policy questions in connection with any such legislation that will require protracted Congressional consideration and we are convinced that it would be highly imprudent to cast away the authority of section 5(b) without any assurance of such a replacement.

Since passage of S. 3957, the Department has given additional consideration to the effect of termination of the present state of emergency on activities authorized by section 215 of the Immigration and Nationality Act (8. U.S.C. 1185). Under Presidential Proclamation No. 3004 of January 17, 1953 and section 215 it is unlawful (with certain exceptions specified by regulation) for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid passport. There is no other statute which makes it unlawful for any citizen to depart from or enter the United States without a valid passport or other official documentation. If, however, the national emergency upon which the Proclamation is based is terminated as now provided by S. 977, the power to regulate the entry into and departure from the United States of United States citizens would be ended.

The most modern forerunner of section 215 was 40 Stat. 559 passed in 1918. It provided that, in time of war and upon public proclamation by the President that the public safety required additional travel restrictions, no citizen could depart from or enter the country without a passport. In 1941 Congress amended the 1918 Act to provide for travel control during a national emergency proclaimed by the President. Presidential Proclamation No. 2523 based on that Act was replaced by Proclamation 3004 based on the Immigration and Nationality Act of 1952 containing the present section 215. Under S. 977 the requirement of a United States passport could be reinstituted by a new declaration of national emergency.

There is a more mundane, but nevertheless real problem for which the declaration of a new national emergency under S. 977 is not an ideal solution. This would be the chaotic conditions at United States ports-of-entry which may result if there is no authority to require citizens to have passports for entry into the United States. If large numbers of citizens choose not to obtain passports for foreign travel and then return undocumented to the United States, long delays in processing will result. In addition, the opportunities for aliens to fraudulently enter the United States will be significantly increased. For these reasons, the Department of State will propose amendment of section 215 of the Immigration and Nationality Act so that its provisions are not dependent upon executive action but stand independently as the expressed will of the Congress. Under S. 977, however, there will be only a one year period in which such legislation can be sought. The Department believes that it would be wise to have the additional year for this purpose provided in H.R. 3884, the House version of S. 977.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

Robert J. McCloskey,
Assistant Secretary for Congressional Relations.

The General Counsel of the Treasury,
Washington, D.C., September 11, 1975.

Hon. Abraham Ribicoff,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Reference is made to your request for the views of this Department on S. 977, the "National Emergencies Act."

One year from the date of its enactment, the proposed legislation would terminate all powers and authorities bestowed upon governmental bodies due to past national emergencies, although certain statutes would be exempted from the application of its provisions. The bill would also establish procedures for Presidential declarations of future national emergencies. Congress would be required to meet within six months after the declaration of such an emergency to determine whether such emergency should be terminated by concurrent resolution.

S. 977, an amended version of proposed legislation relating to national emergencies introduced in the last Congress, reflects the recommendations of the Executive agencies. The Treasury Department believes that this bill represents a workable approach to the national emergencies question.

This Department believes that two features of the bill are especially important. First of all, the bill provides a full year in which the Executive branch and Congress can make the adjustments which may be necessary or desirable in relation to the termination of emergency powers provided for in section 101 of the bill. Given the nature of the legislative process and the number of other legislative programs of current importance, a grace period of two years as provided in H.R. 3884 may be necessary.

Second, the Department strongly believes that the exemption of section 5(b) of the Trading with the Enemy Act from the bill's provisions terminating emergency powers is highly desirable. This exemption is essential to the continued effectiveness of the Foreign Assets Control Program administered by the Department, under which controls are maintained in implementation of existing policies with respect to several foreign countries and their nationals and significant amounts of foreign assets have been frozen for an eventual settlement of the claims of United States citizens whose property has been seized without compensation. In addition, we believe that section 5(b) should be retained for emergency use to deal with international financial and investment problems that may arise in the future.

The Department would like to make one technical comment. Although section 602(a)(1) refers to "12 U.S.C. 95(a)", the correct citation is "12 U.S.C. 95a".

Subject to the above considerations, this Department has no objection to enactment of S. 977.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

RICHARD R. ALBRECHT,
General Counsel.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,

Washington, D.C., January 23, 1976.

Hon. ABE RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a report on S. 977, a bill "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

In summary, because the bill would have no adverse effects on the operations of this Department, we have no objection to the favorable consideration of the bill.

Title I of the bill would terminate the existing state of national emergency, effective one year from the date of enactment. Within the Commissioned Corps of the Public Health Service, the authority to (1) make temporary promotions to a higher grade irrespective of whether a vacancy exists in such grade or not (under 42 U.S.C. 211k), and (2) retire for disability an officer with less than eight years of service on the basis of a "line of duty" determination rather than a "proximate result of service" determination (under 10 U.S.C. 1201), would be terminated.

Title II of the bill would authorize future declarations of national emergencies by the President.

Title III of the bill would provide for the exercise of wartime or national emergency authorities under a congressional declaration of war.

Title IV of the bill would provide that no provisions of law conferring powers and authorities to be exercised during a national emergency or war shall became effective until the President specifies by Executive Order the specific provisions of law under which he or other officials will act. The proposed title would also place limitations on the duration of (1) national emergencies declared by the President, and (2) the exercise of emergency and wartime authorities.

Title V of the proposed bill would require the President to maintain certain records and to report to the Congress all Executive Orders, rules, regulations, orders, etc., issued by himself or Executive Branch officials in implementing national emergency and wartime authorities.

Title VI of the proposed bill would repeal a number of provisions of law, only one of which is of interest to this Department. 42 U.S.C. 211b contained one-time authorities for promotion, service credit, seniority credit, etc., applicable to commissioned officers of the Public Health Service, all to be exercised by July 1, 1948.

The loss of the "line of duty" disability retirement authority and the unrestricted temporary promotion authority within one year after the termination of the existing states of national emergency will cause no unmanageable problems within the Public Health Service. The temporary promotion of commissioned officers will still be possible, but under the more stringent requirements of "vacancy in grade" to which promoted. Officers with less than eight years service will be eligible for disability retirement only if their disabilities are the "proximate result" of service, otherwise they are eligible for disability severance pay. During the period of emergency, disability retirement was possible if the disability was incurred "in line of duty", i.e., not as a result of his own misconduct, not while absent without leave, etc. The one year deferment of the effective date of the termination of the emergency permits adequate time for the indoctrination of disability retirement and temporary promotion boards and dissemination of information regarding new criteria to all of the officers who would be affected.

The proposal to repeal 42 U.S.C. 211b will have no adverse effects. These provisions contained one-time authorities for promotions, seniority credit (for promotion purpose), etc., of commissioned officers of the Public Health Service, all of which were exercised before July 1, 1948. Any benefits that accrued to officers under 42 U.S.C. 211b who are still on active duty are fully protected in that the repeal provides that "any risks . . . matured" prior to repeal are not affected.

We therefore would have no objection to favorable consideration of the bill.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

(s) Marjorie Lynch,
Under Secretary.

Tennessee Valley Authority,
Knoxville, Tenn., May 22, 1975.

Hon. Abraham Ribicoff,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

Dear Senator Ribicoff: This is in response to your April 22 letter requesting TVA's views on S. 977, "A bill to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

Section 601(d) of the bill would repeal section 5(m) of the TVA Act. Section 5(m) of the TVA Act provides:

> No products of the Corporation except ferrophosphorus shall sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war or, until six months after the termination of the national emergency pro-

> claimed by the President on December 16, 1950, or until such earlier date or dates as the Congress by concurrent resolution or the President may provide but in no event after April 1, 1963, to nations associated with the United States in defense activities.

We have reviewed the impact of repeal of this section and find it would have no significant effect on the TVA program. For this reason we would have no objection to the enactment of section 601(d) of S. 977.

The balance of the bill deals with the termination of existing declared emergencies, declarations of future national emergencies, and other matters relating to the emergency powers of the President as well as the repeal or amendment of various statutes not related to the TVA program. As to these matters we will defer to the views of the departments and agencies most directly concerned.

The Office of Management and Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

AUBREY J. WAGNER, *Chairman.*

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 23, 1975.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Your committee has asked for views of this Department concerning S. 977, a bill:

> "To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies."

If enacted the bill would terminate one year from the date of enactment, (with certain exceptions) all powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in Section 105 of Title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment.

Provision is made for the proclamation of national emergencies whenever the President finds it necessary. Any national emergency declared by the President shall terminate if the Congress terminates it by concurrent resolution, or the President issues a proclamation terminating it. Provision is made for periodic review by the Congress every six months to consider whether such declarations of emergency shall continue.

Title III of the bill would provide that whenever Congress declares war any provisions of law conferring powers and authorities to be exercised during time of war shall be effective from the date of declaration.

Provision is made in Title IV for the exercise of emergency powers and authorities. It provides that the President shall specify the provision of law under which he and other officers shall act.

Title V provides for accountability and reporting requirements of the President and Title VI contains certain repeal and continuation provisions.

Within this Department, enactment of this bill would have significant impact only on the United States Coast Guard in the following areas:

(a) In the area of controlling vessels for the purpose of marine security and safety, the Coast Guard for many years has primarily relied on the statutory authority found at 50 U.S.C. 191. Our reliance on the statute, which is keyed to the declaration of a national emergency, has been reduced with the passage of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) by the 92nd Congress, except in the area of actual possession and control of a vessel. Furthermore, the Ports and Waterways Safety Act requires that regulations issued under it be motivated by a concern for vessel and environmental safety and that full rulemaking hearings be conducted in the process of their issuance. However, the statutory authority found at 50 U.S.C. 191 serves as the basis for the regulation of vessels for security reasons alone without the panoply of the administrative procedures noted above.

(b) With regard to merchant vessel inspection and merchant marine documentation, the Coast Guard is also desirous of maintaining some of the statutory authority currently dependent upon a national emergency situation. For example, to ensure adequate manning of subsidized vessels, the provision for waiver of citizenship and naval reserve status of officers and crew contained in Section 1132 of Title 46, United States Code, should be retained.

(c) The Coast Guard is concerned with the impact of the proposed legislation upon Sections 1201 and 1203 of Title 10, United States Code, which deals with physical disability retirement particularly with regard to disability incurred in time of war or national emergency. The proposed legislation would terminate entitlement to disability retirement or separation benefits for members with less than eight years of service whose disability, although incurred in line of duty while on active duty, was not the proximate result of the performance of active duty.

This Department would prefer to continue to use all of the authorities discussed above. Therefore, in the event S. 977 is enacted, we recommend that our existing authority under these sections be excepted from the provisions of the bill.

We have no other suggestion for amendment.

There appear to be no cost implications since the bill provides for no specific new programs.

Subject to the Committee's consideration of the above comments, we would have no objection to enactment of the bill.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report to the Committee.

Sincerely,

John Hart Ely, *General Counsel.*

TEXT OF H.R. 3884 AS REPORTED

AN ACT To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

SEC. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c)(1) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House

in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

SEC. 301. When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 401. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE V—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

Sec. 501. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit", approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831d(m)), is repealed.

(e) Section 1383 of title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes", approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal.

Sec. 502. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5(b));

(2) Act of April 28, 1942 (40 U.S.C. 278b);

(3) Act of June 30, 1949 (41 U.S.C. 252);

(4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(6) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431–1435);

(7) Section 2304(a)(1) of title 10, United States Code;

(8) Sections 3313, 6386(c), and 8313 of title 10, United States Code.

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

Passed the House of Representatives September 4, 1975.

Attest: W. Pat Jennings,
Clerk.

SENATE DEBATE AND ADOPTION OF H.R. 3884

[From the Congressional Record, Aug. 27, 1976, pp. S14840–S14844]

Termination of National Emergencies

Mr. **Mansfield.** Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 1102, H.R. 3884.

The **Presiding Officer.** The clerk will state the bill by title.

The assistant legislative clerk read as follows: a bill (H.R. 3884) to terminate certain authorities with respect to material emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Government Operations, with amendments.

THE END OF 43 YEARS OF NATIONAL EMERGENCY

Mr. **Mathias.** Mr. President, over 5 years ago, I introduced a resolution to study the effect of terminating the state of emergency declared by President Truman in 1950 during the Korean war. In May 1972, Senator Frank Church and I introduced Senate Resolution 9, which created the Senate Special Committee on the Termination of the National Emergency. Over the following 2 years the work of the Special Committee involved many of the country's most distinguished legal scholars, all of the executive departments and agencies, the Library of Congress, and a number of other scholarly institutions. The committee held three sets of public hearings on the history of emergency government in the United States and the constitutional problems that were created as a result of those national emergencies.

The Special Committee ascertained that the United States was under not just one state of national emergency, but four which had been proclaimed in 1933, 1950, 1970, and 1971 respectively, and none of these four states of national emergency had ever been terminated. The committee also found that there were over 470 significant statutes on the books which are triggered by a state of national emergency. These statutes, if taken as a whole, confer on the President the power to rule the United States outside of normal constitutional processes.

It was clear from the special committee's hearings, studies, and inquiries that the full nature and extent of emergency powers statutes had never been understood. It was further evident that the pattern of the growth of emergency power statutes and unrelieved state of emergency Americans have lived under since 1933 had made crisis or emergency government the norm rather than the exception. What was most extraordinary about these statutes was that these powers were delegated by the Congress without a consideration of the consequences of the cumulative effect of these delegated authorities. The four successive proclamations of these states of emergency have provided the President with the statutory power, among other authorities, to seize property and commodities, control the means of production, call to active duty over 1 million reservists, assign military forces abroad, seize and control all means of transportation, restrict travel, institute martial law.

In this century the United States has been through four major wars, catastrophic economic depression and a series of intense crises—the energy crisis being the most recent. These wars, depressions, and crises have created patterns of government which were originally fashioned only to meet the crisis of the moment.

The most important achievement of the Special Committee on National Emergencies and Delegated Emergency Powers, aside from the writing of the National Emergencies Act and creating a heightened awareness of the nature and extent of emergency powers, has been to give the Congress and the country a clear perspective of the process of lawmaking in the United States over the past 40 years.

Despite the responsibilities to make the law conferred on the Legislature by the Constitution, most laws were framed by the executive branch and written in such ways that they gave virtually open ended authority to the executive branch to exercise the power contained in more than 470 emergency power statutes. The combined power contained in these 470 statutes, is far too broad to permit their continuation without constitutional checks.

In large measure, these laws were written by the executive branch and sent to the Congress in a crisis atmosphere. In fact, as was the case in 1933 when the Emergency Banking Act was passed, hearings were not held and there was not even a committee report. Only one typescript copy of the bill was available and the protests of the few Members in both Houses that great powers were being given without restriction went unheeded because of the pressures of the moment.

The pattern of passing bills without thorough consideration, so evident in the history of emergency powers legislation, is found throughout legislative history of the past four decades on a great many other important measures. One result of this tendency in which laws are largely, if not entirely, shaped and written by the Executive, has been that the Congress has failed to exercise its responsibilities for the making of law and policy. Indeed, in the last 40 years the Executive has largely determined without significant legislative participation the shape of the broad area of national security policy and it has done so often under the umbrella of emergency or crisis requirements.

The work of the Special Committee on Emergency Powers has helped to point out that in all areas of legislation, but particularly in the national security area, the Congress must give itself the capabilities to make the judgments about what laws should be made and what policies should be reflected in those laws. Further the experience of 40 years of emergency has underlined the strength of the view that there should be no subjects of policy, no matter how complex or secret which should be determined outside of our constitutional system.

It is clear that the requirements of national security sometimes require secret activity or extraordinary actions to meet threats to the well-being of the American people. But in every case, each of the three branches must be involved in meeting its responsibilities for the actions of the U.S. Government. Under the Constitution, only Congress can make the law. But in order for the Congress to do so, it must have the resources to make judgments which are to be contained in the law. Legislative proposals and recommendations should, of course continue to be made by the executive branch, but each proposal must be examined carefully, and if the issues are sensitive and complex, the Legislature should be provided the information and staff assistance necessary to enable Members of the Congress to do their work.

It is vital that the Congress continue to strengthen its mechanisms and procedures to enable it to effectively carry out its oversight functions. In all areas of Government activity, the Congress must know what actions the executive branch has taken to fulfill national policies set forth in law and how it has expended appropriated moneys. In this regard, the record of accountability of all activities in the United States must be full and complete, and available to the courts and the Legislature so that they may meet their constitutional responsibilities.

The work done by the Special Committee on Emergency Powers has been a pioneering effort. It has laid the ground work, I believe, for bringing the whole area of national security and secret activities under constitutional processes. It has reaffirmed the necessity for an understanding of the lawmaking process as prescribed by the Constitution and has provided a framework for extending the full constitutional procedures into areas which for several decades have been left largely to the discretion of one branch alone.

In the aftermath of Watergate and Vietnam, and the turmoil of the past decade, we have begun to understand how those grievous mistakes of policy and failure of Government could have occurred. It is my belief that this understanding can lead to a strengthened Government. Our Government is stronger because it has reaffirmed its commitment to constitutional processes and each of the three branches is now more keenly aware of the duties, prerogatives, and responsibilities of the other two.

It is my belief that the National Emergencies Act is an example of how the three branches working together can resolve complex problems of Government and share power in ways which strengthen the ability of the Government as a whole to preserve and enhance the liberties, values, and well-being of all of our people.

THE NATIONAL EMERGENCIES ACT

Mr. Church. Mr. President, it is with pleasure that I urge the passage today of the National Emergencies Act by the Senate. The legislation is, at the moment, little noticed and free of controversy, thanks to careful work by the Congress over 3 years time, cooperation with the administration of two Presidents, and a bipartisanship which all too seldom marks our deliberations.

First of all, I would like to extend my appreciation to Senator Mathias, who acted with me as cochairman of the Special Committee on National Emergencies and Delegated Emergency Powers, along with the other members of that committee, and our highly competent staff for the investigation and groundwork that made this bill possible. I also owe special thanks to Senator Ribicoff and the members of his Committee on Government Operations for their excellent cooperation in bringing this bill to the floor.

From the beginning, we have also enjoyed the support of the leadership on both sides of the aisle. Senator Mansfield and Senator Scott leant their assistance whenever it was needed, for which I am very grateful.

Special mention is also due the executive branch of the Government, the cooperation of the Justice Department, the Department of Defense, and many other agencies was indispensable to the accomplishment of our mission. On one occasion, Senator Mathias and I met with President Ford and reached agreement with him on the principles underlying the bill now before us. The President is to be highly commended for his willingness to work with the Congress in developing a legislative formula for ending emergency rule and restoring normal constitutional practices. I also wish to express my gratitude to the members of the Judiciary Committee of the House of Representatives. From the outset, that committee worked in close concert with the Senate in furthering our common objective and fully shares the credit for this legislation. In particular, I want to express my thanks to Chairman Rodino and Representative Flowers.

Mr. President, the obscurity and unanimity which surrounds this bill should not disguise its importance. For more than four decades, this Nation has been governed, in part, by emergency law. The President has had at his disposal virtually dictatorial power, ready for use as he desires. Even now, the President has power under the authority delegated to him by emergency statutes to: seize property; organize and control the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a host of other ways, regulate the lives of all American citizens. And the President can exercise all these extraordinary powers, without so much as asking leave of the Congress.

These powers can be invoked by the President as long as the country remains in a declared state of national emergency. Presently, there are four such national emergencies still in existence:

The national emergency declared by Franklin Roosevelt on March 9, 1933, to cope with the banking crisis;

The national emergency declared by Harry Truman on December 16, 1950, to respond to the Korean conflict;

The national emergency declared by Richard Nixon on March 23, 1970, to deal with the Post Office strike;

The national emergency declared by Richard Nixon on August 15, 1971, to implement currency restrictions and to enforce controls on foreign trade.

This means that a majority of the American people have lived all their lives under emergency rule. For 43 years, protections and procedures guaranteed by the Constitution have, in varying degrees, been abridged by Executive orders that derive from presidentially proclaimed states of national emergency.

The purpose of H.R. 3884 is to terminate, as of 2 years from the date of enactment, powers and authorities possessed by the Executive as a result of existing states of national emergency, and to establish authority for the declaration of future emergencies in a manner which will clearly define the powers of the President and provide for regular congressional review.

In order to carry out this purpose, the National Emergencies Act would:

First. Terminate, as of 2 years from the date of enactment, powers and authorities available to the Executive, pursuant to approximately 470 statutes, as a result of the states of national emergency now in force:

Second. Provide for congressional review of future Presidential declarations of national emergencies no less frequently than every 6 months and congressional termination of states of emergency at any time by concurrent resolution;

Third. Provide for congressional oversight of and accountability for actions taken by the Executive in the exercise of delegated emergency powers;

Fourth. Repeal specific obsolete emergency powers statutes, while retaining in force certain others deemed necessary for ongoing operations of the government.

Emergency rule has always raised troublesome problems both in political theory and in constitutional practice. Since the failure of the Roman Republic, historians and philosophers have analyzed the problem posed to a legislature when it confers extraordinary power upon the Executive. Machiavelli, in his Discourses on Livy, acknowledged that great power may, on occasion, have to be given to the Executive if the state is to survive, but warned of the grave dangers in doing so. He cautioned:

> Yet it is not good that in a republic anything should ever happen that has to be dealt with extralegally. The extralegal action may turn out well at the moment yet the example has a bad effect, because it establishes a custom of breaking laws for good purposes; later with this example, they are broken for bad purposes.

Rousseau discussed the question of delegated emergency powers in his Social Contract. He wrote:

> Moreover, in whatever way this important commission may be conferred, it is important to fix its duration at a very short term which can never be prolonged. In the crises which cause it to be established, the State is soon destroyed or saved; and the urgent need having passed away, the dictatorship becomes tyrannical or useless.

Turning to the American context, I would like to stress that the word "emergency" is not found in the Constitution. As scholar Clinton Rossiter has observed:

> It never seems to have been seriously considered in the Convention of 1787, the *Federalist*, or the debates in the state ratifying conventions that the men who were to govern in future years would ever have to go outside the words of the Constitution to find the means to meet any crisis.

As a result, the authority to respond to a crisis must be derived from the powers that are expressly provided for in the Constitution.

The Supreme Court has indicated that there are clear restraints upon Executive action in times of emergency. In Ex parte Milligan Justice Davis, speaking for the majority of the Supreme Court, wrote:

> The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism; but the theory of necessity on which it is based is false; for the government, without the Constitution, has all the powers granted to it, which are necessary to preserve its existence . . .
>
> . . . It could well be said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation.

Similarly, in 1934, Chief Justice Hughes held for a majority of the Supreme Court:

> Emergency does not create power. Emergency does not increase granted power or remove or diminish restrictions imposed upon power granted or reserved. The

> Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency and they are not altered by emergency.

Nonetheless, the emergency powers made available to the President have steadily expanded. Foreign war and domestic crisis during the past 40 years, in addition to the inexorable growth of the executive bureaucracy under the leadership of aggressive Presidents, and the diminished role of the Congress in the making of policy—these factors have all contributed to the erosion of normal constitutional government.

Little review by the judicial branch was exercised until 24 years ago when the Supreme Court turned back an attempt by President Truman to take over the striking steel industry by means of an assertion of "inherent" emergency power. Speaking for the majority, Justice Black issued the Youngstown Steel opinion which still stands as the definitive statement in this area. Justice Black held that "the President's power, if any, to issue the order must stem from an act of Congress or from the Constitution itself." He characterized President Truman's action as an unconstitutional arrogation of "lawmaking power" by the Executive.

Justice Jackson's widely quoted and praised concurring opinion stressed that our system of government is a "balanced power structure" and pointed out that Executive power to act is a variable depending upon the collective will of Congress for its authority. Justice Jackson listed three situations which determine the extent of the President's power:

> 1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate . . .
> 2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers . . .
> 3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.

In setting forth these tests, authorities feel that Justice Jackson set up a workable analysis which provided a sound conclusion:

> The seizure of the steel mills by President Truman in face of a contrary congressional policy fell into the third of these categories and left presidential power "most vulnerable to attack and in the least favorable of possible constitutional postures." The court could sustain the President's action "only by holding that seizure of such strike-bound industries is within his domain and beyond control of Congress."

Justice Jackson's analysis is as important today as it was when written 24 years ago. As an example of its continuing importance, let me cite the counsel given to the special committee by the late Chief Justice of the Supreme Court, Earl Warren, just prior to his death:

> Chief Justice Warren said that while the Constitution provides that only Congress can make the law, the legislature had the obligation through enacting statutes to provide firm policy guidelines for the Executive branch. The former Chief Justice agreed with Justice Jackson's view that where there are statutory guidelines, a President is obliged to follow the precepts contained in the law passed by the Congress. Inherent powers problems arise and the other branches act, he said, largely when Congress fails to act definitely, when it fails to make needed laws and when there is a necessity for legislative action and Congress fails to meet the challenge.

In writing the National Emergencies Act, we have accepted Justice Jackson's opinion as a basic guideline. It is our belief that the National Emergencies Act will provide long overdue statutory guidelines for the handling of national emergencies in the future. It is our belief, supported, I would suggest, by Justice Jackson's opinion and the weight of constitutional scholarship, that our legislation will constitute the exclusive authority for the exercise of Presidential powers in an emergency. The Congress having acted, the President's power will be, in Justice Jackson's words, "at its lowest ebb." In the future, every type and class of presidentially declared emergency will be subjected to congressional control.

It should be emphasized that nothing in this bill would interfere with the President's right to declare a national emergency in the future or deprive him of the necessary power to cope with such an emergency. The statutes conferring emergency powers remain on the shelf, to be pulled off and used as may be required in order to deal with some future crisis. But the procedures governing the use of emergency powers in the future will always be subject to congressional review and any declaration of an emergency may be terminated by a concurrent resolution of the Congress. Thus the legislative branch will be in a position to assert its ultimate authority.

To those who argue that the duration of a given emergency should be left exclusively to the President to determine, I would cite the precedent established by the British Parliament which, throughout the Second World War, delegated emergency powers to the Prime Minister for no longer than 30 days at a time.

The point is simply this: The Congress should be forewarned that it is inherent in the nature of government that the Executive will seek to enlarge its power. We already have a Presidency the powers of which are unrivaled in our history. The historic redemption of jurisdiction by the Congress which has gone on in this decade—in the form of the War Powers Act, the congressional intervention to circumscribe and finally end the war in Vietnam, the new budget authority and the regaining of some control over foreign policy—is long overdue and urgently needed. The Congress must not again trade away its responsibilities in the name of national emergency. Let that be one of the lessons learned from the investigation now completed and the passage today of the National Emergencies Act.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments were agreed to en bloc.

The amendments were ordered to be engrossed and the bill to be read a third time. The bill was read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

Sec. 201. (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

Sec. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, *whichever date is earlier*, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c)(1) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

Sec. 301. When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

Sec. 401. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE V—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

Sec. 501. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481 (a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit", approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831d(m)), is repealed.

(e) Section 1383 of title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes", approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that mutured or penalties that were incurred prior to repeal.

SEC. 502. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5b));

(2) Act of April 28, 1942 (40 U.S.C. 278b);

(3) Act of June 30, 1949 (41 U.S.C. 252);

(4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(6) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431–1435);

(7) Section 2304(a)(1) of title 10, United States Code;

(8) Sections 3313, 6386(c), and 8313 of title 10, United States Code.

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

Passed the House of Representatives September 4, 1975.

ADOPTION OF SENATE AMENDMENTS TO H.R. 3884

[From the Congressional Record, Aug. 31, 1976, p. H9253]

NATIONAL EMERGENCIES ACT

Mr. FLOWERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 3884) to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 2, strike out lines 16 to 23, inclusive, and insert:

SEC. 201. (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

Page 3, line 18, after "subsection," insert: "whichever date is earlier,".

Page 4, line 14, strike out "days," and insert: "days after the day on which such resolution is referred to such committee,".

Page 4, line 20, strike out "thereafter," and insert: "after the day on which such resolution is reported,".

Page 4, line 25, after "days" insert: "after the day on which such resolution is referred to such committee".

Page 5, line 2, strike out "days," and insert: "days after the day on which such resolution is reported,".

Page 5, lines 9 and 10, strike out "after the legislation is referred to the committee of conference." and insert: "after the day on which managers on the part of the Senate and the House have been appointed.".

Page 5, lines 11 and 12, strike out "in the Record".

Page 5, line 15, strike out "filed." and insert: "filed in the House in which such report is filed first."

Page 5, line 19, strike out "602(b)" and insert: "502(b)".

Page 6, line 15, strike out "the emergency is still in effect." and insert: "such emergency is to continue in effect after such anniversary."

Page 6, lines 18 and 19, strike out "emergency" and insert: "emergency,".

Page 10, line 12, strike out "it" and insert: "such committee".

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

Mr. MOORHEAD of California. Mr. Speaker, reserving the right to object, I want to ask the gentleman from Alabama (Mr. FLOWERS) to clarify the language in one of the Senate amendments. Section 201(a), as amended by the Senate, may be open to an ambiguous and troublesome interpretation. Could the gentleman please tell the House whether there is any intent here to limit either the President's power or flexibility to declare a national emergency?

Mr. FLOWERS. If the gentleman will yield, in my judgment, there is not. I do not think that we want to do that by legislation, in any event.

Mr. MOORHEAD of California. Mr. Speaker, further reserving the right to object, I will ask the gentleman, is the subject matter of the emergency or the timing of its declaration limited or affected in any way?

Mr. FLOWERS. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD of California. Yes. I yield to the gentleman from Alabama.

Mr. FLOWERS. Mr. Speaker, in my judgment it is not. The Senate amendments really just pertain to the activation of the powers that would be accorded of the President under the declaration of an emergency.

Mr. MOORHEAD of California. Mr. Speaker, with that assurance, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

A motion to reconsider was laid on the table.

[From the Presidential Documents, vol. 12, No. 38, p. 1340]

NATIONAL EMERGENCIES ACT

STATEMENT BY THE PRESIDENT ON SIGNING H.R. 3884 INTO LAW SEPTEMBER 14, 1976

I am today signing H.R. 3884, the "National Emergencies Act."

The broad purpose of this bill is to reform the existing maze of statutes which has resulted from the states of emergency under which the country has been operating for over 40 years, and to provide appropriate procedures related to future declarations of national emergencies.

Accordingly, H.R. 3884 would generally terminate, 2 years after its enactment, all powers and authorities conferred on the President, any other government officer or employee, or any executive agency, which result because of the existence of any declaration of national emergency now in force. The 2-year delay would provide time to enact permanent law, where needed, to replace the authorities that are to terminate. The bill would also authorize the President to proclaim the existence of future national emergencies, with provision for congressional review.

I support the purposes of the enrolled bill. One of its provisions, however, would purport to permit the Congress to terminate a national emergency by a concurrent resolution. This feature of the bill is unconstitutional.

As recently as August 13, 1976, in vetoing H.R. 12944, a bill "To extend the Federal Insecticide, Fungicide, and Rodenticide Act," I reiterated my position that provisions for disapproval of regulations and other action by concurrent resolution, or by resolutions of one House, are clearly unconstitutional. Such provisions are contrary to the general constitutional principle of separation of powers whereby Congress enacts laws but the President and the agencies of government execute them. In addition, they violate Article I, section 7 of the United States Constitution which requires that resolutions having the force of law be sent to the President for his signature or veto.

In recent years, the Congress has increasingly given consideration to these kinds of legislative encroachment measures. Accordingly, the Attorney General, at my direction, has become a party plaintiff in a lawsuit challenging the constitutionality of a comparable provision in the Federal Election Campaign Act. In the event that the court strikes down all legislative encroachment-type provisions now in law, I consider section 202(a)(1) of H.R. 3884 as separable from the rest of the bill, and would therefore expect the other provisions relating to emergency powers to remain in force.

NOTE.—As enacted, the National Emergencies Act (H.R. 3884) is Public Law 94–412, approved September 14, 1976.

Public Law 94-412
94th Congress, H. R. 3884
September 14, 1976

An Act

To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

National Emergencies Act.
50 USC 1601 note.

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

50 USC 1601.

Sec. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

"Any national emergency in effect."

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

50 USC 1621.

Sec. 201. (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

Presidential proclamation, transmittal to Congress; publication in Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

Termination methods.
50 USC 1622.

Sec. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency.

Termination date.

Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

Concurrent resolution, referral to congressional committees.

(c)(1) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

Conference committee, filing of report.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)-(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

Post, p. 1258.

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

Notice; publication in Federal Register, transmittal to Congress.

(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

50 USC 1631.

Sec. 301. When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

Executive orders; publication in Federal Register, transmittal to Congress.

TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

Presidential orders, rules and regulations, file maintenance.
50 USC 1641.

Sec. 401. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

Presidential orders, transmittal to Congress.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

Expenditures, reports to Congress.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE V—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

Loss of nationality.

SEC. 501. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

Leases, nonexcess property.

(b) Section 2667(b) of title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

Repeal.

(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit", approved August 8, 1947 (12 U.S.C. 249), is repealed.

Repeal.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 as amended (16 U.S.C. 831d(m)) is repealed.

Repeal.

(e) Section 1383 of title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes", approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

Repeal.

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

Savings provision.
50 USC 1601 note.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal.

50 USC 1651.

SEC. 502. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5(b));

(2) Act of April 28, 1942 (40 U.S.C. 278b);

(3) Act of June 30, 1949 (41 U.S.C. 252);

(4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(6) Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431–1435);

(7) Section 2304(a)(1) of title 10, United States Code;

(8) Sections 3313, 6386(c), and 8313 of title 10, United States Code.

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

Congressional committees, study; report to Congress.

Approved September 14, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-238 (Comm. on the Judiciary).
SENATE REPORT No. 94-1168 (Comm. on Government Operations).
CONGRESSIONAL RECORD:
    Vol. 121 (1975): Sept. 4, considered and passed House.
    Vol. 122 (1976): Aug. 27, considered and passed Senate, amended.
        Aug. 31, House concurred in Senate amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:
    Vol. 12, No. 38 (1976): Sept. 14, Presidential statement.

APPENDIXES

1. Proclamation of National Emergency effectively cancelled by Public Law 94–412
2. The Federal Government and National Emergency Powers: A General Bibliography

PROCLAMATIONS OF NATIONAL EMERGENCY

EXCERPT FROM PUBLIC LAW 1
73D CONG., 1ST SESS. (1933)

[CHAPTER 1.]

AN ACT

To provide relief in the existing national emergency in banking, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application.

TITLE I

SECTION 1. The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

* * * * * * *

—NOTE—

President Roosevelt had declared the state of emergency immediately after his inauguration on March 4, 1933. This act of Congress ratified that decision and promulgations made thereunder.

PROCLAMATION NUMBER 2914

[Dec. 16, 1950, 15 F. R. 9029]

PROCLAIMING THE EXISTENCE OF A NATIONAL EMERGENCY

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS, recent events in Korea and elsewhere constitute a grave threat to the peace of the world and imperil the efforts of this country and those of the United Nations to prevent aggression and armed conflict; and

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Whereas, world conquest by communist imperialism is the goal of the forces of aggression that have been loosed upon the world; and

Whereas, if the goal of communist imperialism were to be achieved, the people of this country would no longer enjoy the full and rich life they have with God's help built for themselves and their children; they would no longer enjoy the blessings of the freedom of worshipping as they severally choose, the freedom of reading and listening to what they choose, the right of free speech including the right to criticize their Government, the right to choose those who conduct their Government, the right to engage freely in collective bargaining, the right to engage freely in their own business enterprises, and the many other freedoms and rights which are a part of our way of life; and

Whereas, the increasing menace of the forces of communist aggression requires that the national defense of the United States be strengthened as speedily as possible:

Now, therefore, I, Harry S. Truman, President of the United States of America, do proclaim the existence of a national emergency, which requires that the military, naval, air, and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repel any and all threats against our national security and to fulfill our responsibilities in the efforts being made through the United Nations and otherwise to bring about lasting peace.

I summon all citizens to make a united effort for the security and well-being of our beloved country and to place its needs foremost in thought and action that the full moral and material strength of the Nation may be readied for the dangers which threaten us.

I summon our farmers, our workers in industry, and our businessmen to make a mighty production effort to meet the defense requirements of the Nation and to this end to eliminate all waste and inefficiency and to subordinate all lesser interests to the common good.

I summon every person and every community to make, with a spirit of neighborliness, whatever sacrifices are necessary for the welfare of the Nation.

I summon all State and local leaders and officials to cooperate fully with the military and civilian defense agencies of the United States in the national defense program.

I summon all citizens to be loyal to the principles upon which our Nation is founded, to keep faith with our friends and allies, and to be firm in our devotion to the peaceful purposes for which the United Nations was founded.

I am confident that we will meet the dangers that confront us with courage and determination, strong in the faith that we can thereby "secure the Blessings of Liberty to ourselves and our Posterity."

In witness whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

Done at the City of Washington this 16th day of December (10:20 a.m.) in the year of our Lord nineteen hundred and fifty, and of the Independence of the United States of America the one hundred and seventy-fifth.

[seal]

Harry S. Truman.

By the President:
Dean Acheson.
Secretary of State.

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PROCLAMATION NUMBER 3972

[Mar. 23, 1970]

Declaring a National Emergency

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas, certain employees of the Postal Service are engaged in an unlawful work stoppage which has prevented the delivery of the mails and the discharge of other postal functions in various parts of the United States; and

Whereas, as a result of such unlawful work stoppage the performance of critical governmental and private functions, such as the processing of men into the Armed Forces of the United States, the transmission of tax refunds and the receipt of tax collections, the transmission of Social Security and welfare payments, and the conduct of numerous and important commercial transactions, has wholly ceased or is seriously impeded; and

Whereas, the continuance of such work stoppage with its attendant consequences will impair the ability of this Nation to carry out its obligations abroad, and will cripple or halt the official and commercial intercourse which is essential to the conduct of its domestic business:

Now, Therefore, I, Richard Nixon, President of the United States of America, pursuant to the powers vested in me by the Constitution and laws of the United States and more particularly by the provisions of section 673 of Title 10 of the United States Code, do hereby declare a state of national emergency, and direct the Secretary of Defense to take such action as he deems necessary to carry out the provisions of said section 673 in order that the laws of the United States pertaining to the Post Office Department may be executed in accordance with their terms.

In witness whereof, I have hereunto set my hand this 23d day of March in the year of our Lord nineteen hundred and seventy, and of the Independence of the United States of America the one hundred and ninety-fourth.

Richard Nixon.

—NOTE—

Proclamation 3972 is a recent example of a limited national emergency. Many similar emergencies have taken place in the past in which proclamations are declared to inform the public that emergency action to meet that particular crisis will be taken. As a general practice, these proclamations have seldom been terminated. Nonetheless, the statutory authority which is triggered by the declaration of a national emergency is not clearly limited by the language of the declaration. It could be argued that even though a particular provision is stressed all the other provisions brought into force by a proclamation of a national emergency could be used.

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PROCLAMATION NUMBER 4074

[Aug. 15, 1971]

Imposition of Supplemental Duty for Balance of Payments Purposes

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas, there has been a prolonged decline in the international monetary reserves of the United States, and our trade and international competitive position is seriously threatened and, as a result, our continued ability to assure our security could be impaired;

Whereas, the balance of payments position of the United States requires the imposition of a surcharge on dutiable imports;

Whereas, pursuant to the authority vested in him by the Constitution and the statutes, including, but not limited to, the Tariff Act of 1930, as amended (hereinafter referred to as "the Tariff Act"), and the Trade Expansion Act of 1962 (hereinafter referred to as "the TEA"), the President entered into, and proclaimed tariff rates under, trade agreements with foreign countries;

Whereas, under the Tariff Act, the TEA, and other provisions of law, the President may, at any time, modify or terminate, in whole or in part, any proclamation made under his authority;

Now, Therefore, I, Richard Nixon, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes, including, but not limited to, the Tariff Act, and the TEA, respectively, do proclaim as follows:

A. I hereby declare a national emergency during which I call upon the public and private sector to make the efforts necessary to strengthen the international economic position of the United States.

B. (1) I hereby terminate in part for such period as may be necessary and modify prior Presidential Proclamations which carry out trade agreements insofar as such proclamations are inconsistent with, or proclaim duties different from, those made effective pursuant to the terms of this Proclamation.

(2) Such Proclamations are suspended only insofar as is required to assess a surcharge in the form of a supplemental duty amounting to 10 percent ad valorem. Such supplemental duty shall be imposed on all dutiable articles imported into the customs territory of the United States from outside thereof, which are entered, or withdrawn from warehouse, for consumption after 12:01 a.m., August 16, 1971, provided, however, that if the imposition of an additional duty of 10 percent ad valorem would cause the total duty or charge payable to exceed the total duty or charge payable at the rate prescribed in column 2 of the Tariff Schedules of the United States, then the column 2 rate shall apply.

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